

## Appendix G-B: Organization Comments



B1



## Center for Biological Diversity

Protecting and restoring endangered species and wild places of North America and the Pacific through science, policy, education, citizen activism and environmental law.

June 27, 2003

Diane Simpson-Colebank, Environmental Planner  
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Ms. Simpson-Colebank,

On behalf of our over 7500 members across Arizona and the nation, we offer the following comments on the environmental assessment for the proposed Yuma Area Service Highway.

**B1-1** | We incorporate by reference the comments of the Yuma Audubon Society.  
**B2-2** | Roads have significant negative effect on the environment, and many of the science documenting these impacts may be found at: <http://www.wildlandscpr.org/databases/index.html>

**B1-3** | **THE EA CLEARLY VIOLATES NEPA BY FAILING TO PROVIDE A REASONABLE RANGE OF ALTERNATIVES:**

The EA presents only two choices, the proposed route and no action. This is clearly contrary to the law and several court decisions. The range of alternatives is the heart of NEPA, and this EA has no heart.

**B1-4** | **THE EA CLEARLY VIOLATES NEPA BY FAILING TO PROVIDE BROAD PUBLIC NOTICE OF E.A. AVAILABILITY OR PROVIDE ADEQUATE COMMENT PERIOD:**

This availability of the EA was not published in the federal register and the 30 day comment period is too short to allow adequate review time.

The CEQ regs mandate that agencies "shall to the fullest extent possible . . . encourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. 1500.2(c); SMS Data Products Group, Inc. v. U.S., 853 F.2d 1547, 1553-54 (Fed. Cir. 1988) ("As one would expect, use of the word 'shall' . . . denotes the imperative"). Failing to publish the availability of this document in the federal register clearly fails to involve the public to "the fullest extent possible."

**B1-5** | In *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1247 (9th Cir. 1984), the Ninth Circuit affirmed a district court's holding that a federal agency's decision to allow a short comment period on an Environmental Assessment was inadequate and in violation of NEPA and the CEQ regulations. Likewise, in *Wroncy v. BLM*, 777 F. Supp. 1546, 1548 (D. OR. 1991), the district court for the district of Oregon issued a temporary restraining order against a federal agency program based on plaintiff's showing of a strong likelihood of success on the merits of his claim

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**Response to Comment B1-1** Comment is noted in the project record.

**Response to Comment B1-2** Comment is noted in the project record.

### Response to Comment B1-3

Alternative corridors were originally evaluated for the Yuma Metropolitan Planning Organization's *Countywide Transportation Plan* in 1989. The Final Environmental Assessment (EA) has included additional discussion on the corridor selection process, as well as the alternatives considered. Refer to the Final EA, Section II. Alternatives Considered, for additional discussion.

### Response to Comment B1-4

Both a public notice and an adequate comment period were provided for this project.

According to 23 CFR 771 .119 (Title 23 – Highways; Chapter 1 – Federal Highway Administration, Department of Transportation; Part 771- Environmental Impact and related procedures table of contents; Sec. 771 .119 – Environmental Assessments)

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, would be sent by the applicant to the affected units of Federal, State and local government. Notice would also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA would be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers would announce the availability of the EA and where it may be obtained or reviewed. Comments

would be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in Sec. 771.111.

The availability of the EA is not required to be published in the Federal Register. Copies of the Draft EA were available for public review at the Yuma City Clerks office, the Yuma County Library, the San Luis Branch Library, and the Bureau of Land Management (BLM), Yuma Office. Notification for the June 12, 2003, public hearing was published in the Yuma daily newspaper, *The Sun*, on May 23, and June 6, 2003. The notice was also published in Spanish in the *Bajo El Sol* on May 23 and June 6, 2003. The public hearing newspaper notice was also mailed to the Yuma Civic and Convention Center, approximately 2 weeks prior to the hearing for posting in and around the complex to provide additional notification. Notice of the public hearing was also placed on the Arizona Department of Transportation's (ADOT) Web site <http://www.dot.state.az.us/ROADS/SR195/index.htm> and the Yuma Metropolitan Planning Organization Web site, within the Voice Your Opinion section <http://www.ympo.org>. The recommended comment period was also provided for public inquires and questions.

#### **Response to Comment B1-5**

*Save Our Ecosystems v. Clark* involved the Ninth Circuit Court of Appeals' upholding a District Court's ruling on agency (BLM) EAs that functioned as supplements to a programmatic Environmental Impact Statement (EIS) that covered a 10-year herbicide application program. As such, the agency issued annual EA versions of the EIS that served as decision-making documents for assessing the environmental costs of each year's intended spraying program. These EAs were not prepared as documents for use in deciding whether a given year's spraying program warranted an EIS. The court interpreted each EA as being the functional equivalent of an EIS and, therefore, each was to be accorded the same procedural and minimum 45-day comment period that a draft EIS would warrant. The Court affirmed that BLM's provision of only 5 days of public comment on each EA was, therefore, insufficient.



**Response to Comment B1-5 (continued)****Response to Comment B1-5 (continued)**

This case does not appear to be relevant to the Yuma Area Service Highway (ASH) EA because the ASH EA is not intended to be the functional equivalent of an EIS. A standard reason for preparing an EA is to determine whether an EIS is warranted. An EA is not under the same procedural requirements as an EIS.

*Colony Federal Savings and Loan Association v. Harris* affirms the necessity for federal agencies to provide (either directly or indirectly, by way of oversight) a sufficiently long and timely citizen comment period for the preparation of an EIS. The behavior of the U.S. Department of Housing and Urban Development (HUD) and Beaver County (Pennsylvania) in neither seeking nor allowing citizen input is not relevant to the behavior of the Federal Highway Administration (FHWA) or ADOT in the case of the Yuma ASH, where numerous public meetings have been held in the development of the Major Investment Study (MIS) and one such public meeting has been held for review of and comment on the Draft EA.

Regarding *Hanley v. Kleindienst*, FHWA and ADOT have followed the intent of Congress and the guidance of the Court in seeking “preliminary or threshold determination of significance” by “giving notice to the public of the proposed major federal action and an opportunity to submit relevant facts which might bear upon the agency’s threshold decision.”

In fact, the Court decision states the above-suggested actions are not mandatory, but are prudent to take. A public hearing allows an agency to both obtain all relevant data and to satisfy the community’s concern that its views are being considered. Neither NEPA nor any other federal statute mandates the specific type of procedure to be followed by federal agencies. There is no statutory requirement that a public meeting per se be held (18 United States Code [USC] § 4003, 40 USC §§ 602–606). CEQ guidelines do, however, suggest that agencies “shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action” (CEQ, Statements on Proposed Federal Actions Affecting the environment, Guidelines § 10(e), 36 CFR § 7724, 7726 [April 23, 1971]). These provisions apply only to the procedures for preparation of detailed

B1

B1-5  
(cont'd)

that the agency failed to provide adequate public notice of the agency's EA and FONSI. Moreover in *Friends of Walker Creek Wetlands v. BLM*, 19 ELR 20852, 20854 (D.Or. 1988), the district court held that the federal defendants "did not adequately provide for public participation to the extent practicable" and ordered the agency to provide a 45 day public comment period on an EA.

It is well settled law that "[c]itizen participation is a vital ingredient in the success of NEPA" and that the "opportunity for local citizens or other interested parties to participate in the preparation of the environmental analysis is mandatory under NEPA." *Colony Federal Savings & Loan Ass'n v. Harris*, 482 F. Supp. 296, 304 (W.D. Pa. 1980) (emphasis in original). Indeed, even before the CEQ regulations were promulgated, courts made clear that federal agencies could not exclude from their decision making process those persons who would be most likely to object on environmental grounds. The seminal case for this proposition is *Hanley v. Kleindienst*, 471 F.2d 823, 836 (2nd Cir. 1972), which held that before a preliminary or threshold determination of significance is made the responsible agency must give notice to the public of the proposed major federal action and an opportunity to submit relevant facts which might bear upon the agency's threshold decision.

B1-6

The CEQ regulations also highlight the vital importance of public involvement in the NEPA process. Thus, the very first section of the regulations provides that "NEPA procedures must ensure that environmental information is available to the public officials and citizens before decisions are made and before actions are taken," and, furthermore, that "public scrutiny [is] essential to implementing NEPA." 40 C.F.R. " 1500.1(b) (emphasis added). The CEQ regulations further state that "Federal agencies shall to the fullest extent possible . . . encourage and facilitate public involvement in decisions which affect the quality of the human environment." Id. at " 1500.2(c).

Similarly, the CEQ regulations specifically mandate that agencies preparing NEPA documents "shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments . . ." Id. at " 1501.4(b)(emphasis added). CEQ has further explained this requirement, and how it intersects with other CEQ requirements, as follows: Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSI's. These are public "environmental documents" under section 1506.6(b), and, therefore, agencies must give broad public notice of their availability.

B1-7

As explained by Judge Kessler, plaintiffs satisfied the first prong of the test for issuance of emergency injunctive relief because plaintiffs had raised "a very substantial question about whether the defendants have allowed sufficient opportunity for public involvement and input under the CEQ regulations and under applicable case law . . ." Transcript of Bench Order Granting TRO at 59 (Plf. Exh. 19). Similarly here, the FHWA decision to bypass broad public review and comment on its controversial decision to issue a approve the YASH also raises very substantial questions about FHWA's compliance with NEPA and the CEQ regulations -- questions that should be addressed on the merits before the highway project is approved as proposed. See *Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st. Cir.1989) (Breyer, J.) ("[T]he harm at stake is . . . the harm to the environment that takes place when governmental decision makers make up their minds without having before them an analysis (with prior public comment) of the likely effects of their decision upon the environment."

B1-8

To comply with the law, FHWA must start an EIS process, with full notice in the federal register and/or prominent regional newspapers (*Arizona Republic* and *Arizona Daily Star*), and allow at least 90 days public review from date of publishing notice of availability.

impact statements *after* the preliminary determination of significance has been made. Such a determination for the ASH had not been made at the time of the public hearing.

**Response to Comment B1-6**

Notification for the June 12, 2003, public hearing was published in the Yuma daily newspaper, *The Sun* on May 23 and June 6, 2003. The notice was also published in Spanish in the *Bajo El Sol* on May 23 and June 6, 2003. The public hearing newspaper notice was mailed to the Yuma Civic and Convention Center, approximately 2 weeks prior to the hearing, for posting in and around the complex to provide additional notification.

The Draft EA (pp. 6, 8) recounts the active participation of a variety of agencies in the planning for the ASH: "The Metropolitan Planning Regulations (23 CFR § 450.318) require YMPO [Yuma Metropolitan Planning Organization]/ADOT to consult and concur with other agencies on issues relating to major metropolitan investments. A Major Investment Study (MIS) has been conducted for the project. The MIS process included the documentation of YMPO's prior planning efforts, a cost effectiveness analysis, the evaluation of alternatives, the preparation of the MIS, and a public meeting. Based on the results of the MIS, the cost effectiveness of the project has been demonstrated. Additionally, the public and affected agencies such as BLM [Bureau of Land Management], BOR [Bureau of Reclamation], and MCASY [Marine Corps Air Station Yuma] have supported the proposed project through the public meetings that have been held for the MIS and during the last decade in association with the ASH planning. These three agencies and the U.S. Navy are cooperating agencies as part of the National Environmental Policy Act (N EPA) process for this project."

Coordination letters were sent and/or invitations to project meetings were extended to the following agencies or agency officials for the ASH project:

- Aha Makey Cultural Society
- Ak-Chin Indian Community Council
- Arizona Department of Agriculture

**Response to Comment B1-7 (continued)**

**Response to Comment B1-6 (continued)**

- Arizona Department of Corrections,
- Arizona State Prison Complex – Yuma
- Arizona Department of Environmental Quality
- Arizona Department of Public Safety
- Arizona Game and Fish Department
- Arizona State Land Department
- Arizona State Land Department, Commissioner
- Arizona State Land Department, Planning Department
- Chemehuevi Indian Tribe
- City of San Luis
- City of San Luis, Administrator
- City of San Luis, City Manager
- City of San Luis, Mayor
- City of San Luis, Public Works
- City of Somerton
- City of Somerton, Mayor
- City of Yuma
- City of Yuma, Administrator
- City of Yuma, Community Development
- City of Yuma, Engineer
- City of Yuma, Planning and Zoning
- City of Yuma Police Department
- City of Yuma Public Works
- Cocopah Indian Tribe
- Cocopah Indian Tribe, Resource Planner
- Colorado River Indian Tribes
- Comité de Bienestar
- Fort Mojave Tribal Council
- General Service Administration Region IX
- Gila River Indian Community
- Greater Yuma Port Authority
- Hopi Tribal Council
- Quechan Indian Tribe
- Salt River Pima-Maricopa Indian Community
- Tohono O'odham Tribal Council
- Town of Welton
- Town of Welton, Mayor

- Town of Welton, Town Manager
- US Army Corps of Engineers
- US Army Yuma Proving Grounds, Environmental Director
- US Border Patrol
- US Congressman Grijalva Natural Resources Advisory Team
- US Customs and Border Protection,  
Director of Field Operations (Arizona)
- US Customs Service
- US Customs Service, Director of Field Operations (Arizona)
- US Customs Service, In-bound Process Management
- US Customs Service, Out-bound Process Management
- US Customs Service, Port Director
- US Department of Agriculture, Animal & Plant Health Inspection  
Service, Operations Officer
- US Department of Agriculture  
Natural Resources Conservation Service
- US Department of Agriculture, Natural Resources Conservation  
Service, District Conservationist
- US Department of the Interior, Bureau of Indian Affairs,  
Agency Lands Operations
- US Department of the Interior, Bureau of Land Management
- US Department of the Interior, Bureau of Land Management,  
Realty Specialist
- US Department of the Interior, Bureau of Land Management,  
Field Office Manager
- US Department of the Interior, Bureau of Reclamation
- US Department of the Interior, Bureau of Reclamation,  
Area Manager
- US Department of the Interior, Bureau of Reclamation, Manager
- US Department Justice, Immigration and Naturalization Service,  
Asst. Chief Inspector
- US Department Justice, Immigration and Naturalization Service,  
Director
- US Department Justice, Immigration and Naturalization Service,  
Chief of Facility Planning
- US International Boundary and Water Commission

**Response to Comment B1-9 (continued)**

**Response to Comment B1-6 (continued)**

- US International Boundary and Water Commission, Engineer
- US Fish and Wildlife Service
- US Marine Corps Air Station Yuma
- US Marine Corps Air Station Yuma, Naval Facilities Engineering Command
- US Marine Corps Air Station Yuma, Naval Facilities Engineering Command Southwest Division
- US Marine Corps Air Station Yuma, Naval Facilities Engineering Command Southwest Division Real Estate Specialist
- Yuma County, Administrator
- Yuma County, Emergency Services
- Yuma County, Planning and Zoning Department
- Yuma County, Police Department
- Yuma County, Public Works Department
- Yuma County, Sheriff
- Yuma County, Supervisor
- Yuma County Water Users Association
- Yuma International Airport
- Yuma Mesa Irrigation and Drainage District
- Yuma Mesa Irrigation and Drainage District, General Manager
- Yuma Metropolitan Planning Organization

The first formal scoping meeting for the agencies was held on December 14, 1995. The scoping meeting and the public information meeting took place at the Yuma Civic and Convention Center.

YMPO held a meeting on December 13, 2000, on the modification to the western terminus of the ASH. Letters of invitation were sent to the MIS stakeholders and a notice was published in *The Sun*. Participants at the December meeting expressed support for the proposed change to the terminus of the ASH and stated that they believed that it would better serve the purpose of the ASH.

The following dates represent YMPO Executive Board meetings where the ASH was either discussed or was placed as an item on the meeting agenda. These meetings were open to the public and

**Response to Comment B1-6 (continued)**

public comment was accepted. The meeting agenda was made available to the public prior to the meeting.

September 30, 1993  
 November 4, 1993  
 July 28, 1994  
 December 21, 1994  
 January 26, 1995  
 February 23, 1995  
 May 4, 1995  
 July 27, 1995  
 August 31, 1995  
 October 25, 1995  
 December 5, 1995  
 December 28, 1995  
 January 31, 1996  
 March 7, 1996  
 March 27, 1996  
 April 25, 1996  
 May 23, 1996  
 August 29, 1996  
 January 23, 1997  
 February 24, 1997  
 February 24, 1997  
 March 27, 1997 May  
 1, 1997  
 May 29, 1997  
 June 26, 1997  
 August 28, 1997  
 October 2, 1997  
 November 13, 1997  
 December 18, 1997  
 January 28, 1998  
 February 26, 1998  
 March 26, 1998 May  
 28, 1998  
 July 30, 1998  
 August 27, 1998  
 September 3, 1998

**Response to Comment B1-6 (continued)**

September 29, 1999  
 October 28, 1999  
 November 18, 1999  
 December 14, 1999  
 January 27, 2000  
 February 24, 2000  
 March 30, 2000 April  
 27, 2000 May 25,  
 2000 June 29, 2000  
 July 27, 2000 August  
 31, 2000 September  
 28, 2000  
 April 26, 2001 May  
 31, 2001 June 28,  
 2001 August 30,  
 2001 September 27,  
 2001  
 November 29, 2001  
 January 31, 2002  
 June 27, 2002 July  
 25, 2002 August 22,  
 2002 September 26,  
 2002  
 October 31, 2002

The ASH was also discussed within two YMPO Special Executive Board Meetings, the dates are the following,

August 29, 1992  
 September 10, 1998

The following dates represent additional dates when YMPO held public meetings regarding the ASH or other public meeting where the ASH was discussed.

August 29, 1992  
 July 28, 1994  
 September 30, 1994

**Response to Comment B1-6 (continued)**

November 4, 1994  
 December 21, 1994  
 January 26, 1995  
 February 23, 1995  
 May 4, 1995 June  
 15, 1995 July 27,  
 1995 August 31,  
 1995 October 25,  
 1995  
 December 5, 1995  
 December 28, 1995  
 January 31, 1996  
 March 7, 1996  
 March 27, 1996  
 April 25, 1996  
 May 23, 1996  
 June 27, 1996  
 August 29, 1997  
 January 23, 1997  
 February 24, 1997  
 March 27, 1997 May  
 1, 1997 May 25, 1997  
 May 29, 1997 June  
 26, 1997 August 7,  
 1997 August 28,  
 1997 September 25,  
 1997  
 October 2, 1997  
 November 13, 1997  
 December 18, 1997  
 January 28, 1998  
 February 26, 1998  
 March 26, 1998  
 May 28, 1998 July  
 30, 1998 August 27,  
 1998 September 3,  
 1998  
 September 10, 1998



Response to Comment B1-6 (continued)

September 29, 1999	
October 28, 1999	
December 14, 1999	
January 27, 2000	
February 24, 2000	
March 30, 2000	
April 27, 2000	
June 29, 2000	
July 27, 2000	
August 31, 2000	
September 28, 2000	
October 26, 2000	
November 30, 2000	
	January 18, 2001
	February 22, 2001
April 26, 2001	
May 31, 2001	
June 28, 2001	
August 30, 2001	
September 27, 2001	
November 29, 2001	
January 31, 2002	
February 27, 2002	
May 30, 2002	
June 27, 2002	
July 25, 2002	
August 22, 2002	
September 26, 2002	
October 31, 2002	
December 12, 2002	
January 30, 2003	
February 27, 2003	
March 27, 2003	
April 24, 2003	
May 29, 2003	
June 26, 2003	

B1

CONCLUSION AT THIS TIME

B1-9  
B1-10  
B1-11

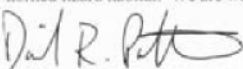
We find the cumulative effects analysis lacking. There is virtually no discussion of military encroachment issues. We believe the project may violate the Clean Air Act, as it will allow additional air contamination in an EPA declared non-attainment area.

B1-12

It is clear based on the scope of this project and FHWA own regulations that an environmental impact statement is required. If proponents try to approve this project based on this EA it is highly likely the Center and other citizens' groups will sue. FHWA reportedly said the comment period would be open until July 1. We look forward to submitting additional comments on this EA by July 1, and commenting further during the scoping and draft phases of the EIS.

B1-13

We could support a route further to the west that avoided the BMGR and flat-tailed horned lizard habitat. We are willing to discuss these options with proponents.



Daniel R. Patterson  
Desert Ecologist  
Center for Biological Diversity

**Response to Comment B1-7**

As noted in the previous responses, B1-4 and B1-6, a public review and comment period was provided for the EA and notification of a public hearing was distributed in two local newspapers, through the Yuma Civic and Convention Center, and through the ADOT, Yuma Metropolitan Planning Organization, and with the Voice Your Opinion section web sites.

**Response to Comment B1-8**

Refer to the response to comment B1-7. The appropriate review notification procedures and the appropriate duration of the public review period for an EA were the operative guiding policies.

The NEPA and related supporting regulations require that an EIS be prepared and approved when a proposed Federal action (e.g., the authorization for the use of Federal-aid Highway Program funds to construct a highway improvement) would cause *significant* impacts. The completed studies, evaluations, and public outreach conducted by ADOT and FHWA have not identified impacts resulting from the proposed improvements that are *significant*. While there are virtually no improvements without some adverse effects, the efforts ADOT and FHWA have undertaken to identify possible adverse effects have afforded substantial public input and involvement, considered a reasonable range of alternatives, evaluated the impacts in terms of context and intensity, and provided reasonable plans to mitigate and minimize any adverse impacts. At this time, the FHWA does not believe there is a legitimate basis for preparing an EIS.

**Response to Comment B1-9**

The Final EA provides additional discussion on cumulative effects, as well as the alternatives considered. Refer to the Final EA, Section II. Alternatives Considered.

**Response to Comment B1-10**

In a December 16, 2002, memorandum from Major C. C. Hale, Deputy Director of the Joint Law Center at MCASY, to Charles R. Saltzer, MCASY Facilities Manager, Major Hale states that "development of the ASH would act as a buffer to further encroachment on the Barry M. Goldwater Range (BMGR)." Page 22 of the Draft EA states, "MCASY has ... stated a preference for the

**Response to Comment B1-10 (continued)**

ASH to be located inside the BMGR so that unwanted encroachment by commercial and residential development adjacent to the roadway can be prevented.” In an e-mail (July 1, 2003) from Charles R. Saltzer to Mike Bruder, ADOT Project Manager, Charles Saltzer acknowledges,

... [D]evelopment along the ASH from Araby Road south to the BMGR and from the BMGR west to Avenue E would more than likely occur on both sides of the ASH. This development does not encroach on aircraft operations performed within the BMGR or Marine Corps Air Station (MCAS) Yuma. MCAS does not object to development within these areas.

For the 9 miles that the ASH would be located within the BMGR, the Marine Corps would have management responsibility. Mr. Saltzer's e-mail communication of July 1 to Mr. Bruder continues,

Building the ASH within the BMGR would not encourage private development along the road because the property is owned by the Federal Government. This highway would be a high-speed expressway without any development or interchanges on the portion of land within the BMGR. If the alternative route which is outside the BMGR and somewhere within the 2½ miles separating the BMGR from MCAS is used, incompatible encroachment would occur. The alternative would also encourage development under the only remaining overflight pattern for MCAS. Presently the Joint Land Use Plan provides protection to MCAS from incompatible development within this area. If the ASH is built through this area instead of on the BMGR, then pressure ... to build adjacent to the route would occur. MCAS is not the controlling authority for this land; however, MCAS is the controlling authority for land within the BMGR. If encroachment happens in this alternate route area, it would negatively impact on the mission of MCAS.

**Response to Comment B1-10 (continued)**

According to representatives from MCASY there would be *less* cumulative development and resultant encroachment by locating the ASH *within* the BMGR than by locating it on an alignment near—but *outside*—the BMGR. The relevant military inputs reflected in this conclusion about potential encroachment by development have been part of the planning process for the ASH from its earliest conceptions.

**Response to Comment B1-11**

The 2000 Air Quality Conformity Analysis (for the Yuma PM<sub>10</sub> Nonattainment Area), approved by FHWA and the Federal Transit Administration on January 23, 2001, demonstrated that the adopted 2001–2005 Transportation Improvement Plan (TIP) and 2000–2023 Countywide Transportation Plan (CTP) (approved November 30, 2000) conform to the Yuma PM<sub>10</sub> Nonattainment Area State Implementation Plan.

The ASH was included in the conforming TIP and CTP and is also included in the 2001–2003 State Transportation Improvement Program (STIP). The proposed ASH is a conforming project, signifying that it does not contribute to any new PM<sub>10</sub> violations, increase the frequency or severity of PM<sub>10</sub> violations, and would not delay attainment of the PM<sub>10</sub> standard.

**Response to Comment B1-12**

Response is identical to the response for comment B1-8.

**Response to Comment B1-13**

Comment is noted in the project record.

B2



July 30, 2003

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FAX: 480-966-9232

Re: Draft EA for proposed Yuma Area Service Highway

Dear Ms. Simpson-Colebank,

Defenders of Wildlife (Defenders) appreciates the opportunity to provide comments on the draft Environmental Assessment (EA) for the proposed Yuma Area Service Highway. A national environmental organization with over 400,000 members nationwide, Defenders has a long-standing interest in the natural environment of the border regions of the southwestern United States. In Arizona, Defenders has long sought protection for the Sonoran pronghorn, Cactus ferruginous pygmy-owl, flat-tailed horned lizard, Mexican wolf and many other native plants, animals and their habitats.

We understand that the formal deadline for submitting comments on this draft EA was June 27, 2003. However, at a July 1, 2003 meeting with Lori Faeth of the Arizona Governor's office, Mr. Richard Duarte with the Arizona Department of Transportation encouraged Defenders to submit comments on this draft EA in spite of the posted deadline. We ask that the comments outlined below will be taken into consideration as this project moves forward.

**The Draft EA is in violation of NEPA**

By drafting an EA instead of an Environmental Impact Statement (EIS), the Federal Highway Administration (FHWA) has violated its own implementing regulations for the National Environmental Policy Act (NEPA) which clearly state an EIS is required in this case. The regulations state, "Actions that significantly affect the environment require an EIS...The following are examples of actions that normally require an EIS: 1) A new controlled access freeway; 2) A highway project of four or more lanes on a new location." 40 CFR 1508.27 Very clearly this proposed project meets both of these criteria, and because of this an EIS should have been initiated at the outset of the planning process. Furthermore, the current draft EA does not adequately analyze the potential direct, indirect and cumulative impacts from this project, nor does it offer or analyze any reasonable alternatives to the proposal, all of which is required by NEPA. There is in fact little if any meaningful analysis of what impacts are likely to occur and what alternatives are available, violating both the letter and the spirit of NEPA.

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Fax: 202-682-1331  
www.defenders.org  
www.kidsplanet.org

B2-1

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**Response to Comment B2-1**

The National Environmental Policy Act (N EPA) and related supporting regulations require that an environmental impact statement (EIS) be prepared and approved when a proposed Federal action (e.g., the authorization for the use of Federal-aid Highway Program funds to construct a highway improvement) would cause *significant* impacts. The completed studies, evaluations, and public outreach conducted by the Arizona Department of Transportation (ADOT) and the Federal Highway Administration (FHWA) have not identified impacts resulting from the proposed improvements that are clearly *significant*. While there are virtually no improvements without some adverse effects, the efforts ADOT and FHWA has undertaken to identify possible adverse effects have afforded substantial public input and involvement, considered a reasonable range of alternatives, evaluated the impacts in terms of context and intensity, and provided reasonable plans to mitigate and minimize any adverse impacts. At this time, FHWA does not believe there is a legitimate basis for requesting ADOT to prepare an EIS.

B2

B2-2

This project will adversely impact habitat for the Flat-tailed horned lizard.

We are also concerned because of the potential impacts that it will have on the Flat-tailed horned lizard, an imperiled species which is not yet officially listed under the Endangered Species Act, but whose current status undeniably warrants such an action. This proposed highway will fragment and destroy essential habitat for this species, and because of its continuing decline, this could have severe implications for the species' survival. That the project will adversely impact the species' habitat is all but conceded in the draft EA, which includes unproven mitigation measures that are meant to allow the lizard to move across the highway. These measures are included precisely because of the significant adverse impacts that this project is likely to have on the species. Yet no meaningful analysis of the extent of these impacts is provided in this EA.

B2-3

As well, it is our understanding that the road design elements offered as mitigation, including fencing and corrugated metal pipes that pass underneath the highway, have never been attempted for this species. There is no research or evidence presented in the EA that suggests they will be effective, and there is no discussion of potential uncontrollable variables such as buildup of sand and soil that would allow the lizard to crawl over the fencing, rendering such measures completely ineffective. It is therefore assured that this project will impact the species, yet there is virtually no assurance that these impacts will be mitigated, leaving the species extremely vulnerable to further decline.

B2-4

Conclusion

Because of the gross inadequacies of this draft EA, as well as the blatant disregard for the FHWA's own NEPA implementing regulations which clearly call for an EIS for this type of project, this project must not move forward unless and until, at a minimum, an EIS is completed that provides a robust analysis of various alternatives and all potential impacts. Furthermore, because of the significant adverse impacts that this project will have on the Flat-tailed horned lizard and its habitat, we oppose this project in its current form. We strongly urge the FHWA, as it prepares the necessary EIS for this project, to present and seriously consider alternatives which do not result in the direct fragmentation and destruction of essential habitat for the lizard, and that avoid or significantly minimize indirect and cumulative impacts to this species.

B2-5

Thank you for your consideration.

Sincerely,

  
Jenny Neeley  
Southwest Associate

cc: William Snape, Vice-President for Law and Litigation, Defenders of Wildlife  
Richard Duarte, Environmental Planning Group, AZ Dept. of Transportation  
Debra Brisk, Deputy Director, AZ Department of Transportation  
Lori Faeth, Policy Advisor for Natural Resources, AZ Governor's office

## Response to Comment B2-2

Three separate Biological Evaluations have been prepared for the project, and on November 7, 2002, FHWA requested formal conference with the US Fish and Wildlife Service (FWS) pursuant to Section 7 of the Endangered Species Act (ESA) on the project's potential impacts to the Flat-tailed horned lizard (FTHL). In a letter dated January 27, 2003, FWS informed FHWA that the proposed rule to list the FTHL as threatened had been withdrawn and Section 7 conference for the FTHL would not be completed.

Because of the January 3, 2003, withdrawal of the proposed rule, the FTHL does not currently receive protection under ESA. In the withdrawal of the proposed rule, FWS determined that listing the FTHL was not warranted because "threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range." FWS considered the ASH in its decision to withdraw the proposed rule, stating that the impact of the ASH "does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act." Should the FTHL become listed under ESA before the project is completed, FHWA would reinstate Section 7 consultation with FWS.

The Final EA has included additional discussion on the corridor selection process, as well as the alternatives considered. The evaluation of alternatives considered impacts to the flat-tailed horned lizard in addition to a variety of other factors. Refer to the Final EA, Section II. Alternatives Considered, for additional discussion.

## Response to Comment B2-3

ADOT and FHWA rely on the US Fish and Wildlife Service, Arizona Game and Fish Department and FTHL Interagency Coordinating Committee to provide input into the development of FTHL mitigation measures that are based on the best available scientific data. ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop a mitigation approach that is consistent with the *FTHL Range-wide Management Strategy*,

**Response to Comment B2-3 (continued)**

*2003 Revision*, and that would provide the most effective protection to local FTHL populations. It is understood by all parties that there is incomplete information on certain aspects of FTHL ecology and conservation needs. FTHL mitigation for the ASH includes a suite of actions and monitoring of their effectiveness. The mitigation actions include FTHL barrier fencing, fencing of right-of-ways and portions of the Yuma Desert Management Area to preclude vehicle access off of designated roads and trails, biological monitors during construction, and compensation of lost habitat. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

**Response to Comment B2-4**

Refer to the response to comment B2-1.

**Response to Comment B2-5**

FHWA and ADOT are committed to mitigating potential impacts on the FTHL through on-site minimization measures and compensation fees for acquisition and conservation of suitable FTHL habitat. The mitigation actions are consistent with the *FTHL Rangewide Management strategy, 2003 Revision*.

ADOT and FHWA re-evaluated the ASH alignment on the Barry M. Goldwater Range and modified the alignment in order to further reduce fragmentation of FTHL habitat. Two alignment adjustments on the BMGR resulted in the conservation of 418 acres of high quality FTHL habitat. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

The Final EA has included additional discussion on the corridor selection process, as well as the alternatives considered. The evaluation of alternatives considered impacts to the flat-tailed horned lizard in addition to a variety of other factors. Refer to the Final EA, Section II. Alternatives Considered, for additional discussion.

B3



Diane Simpson-Colebank  
Logan Simpson Design Inc.,  
51 West Third Street, Suite 450,  
Tempe, Arizona 85281

Subject: Yuma Area Service Highway Environmental Assessment

The Maricopa Audubon Society located in central Arizona wishes to submit our comments on why an alternative should be proposed for the area service highway. Maricopa Audubon Society members and our society have over the past decades participated in field trips and nature study in the Yuma area and the surrounding desert. We see this highway issue as a part of an environment that is of concern to our members.

B3-1

There are many reasons to reject the route that was selected for the Area Service Highway. A different route, farther to the west of the selected route, would eliminate most of these objections.

1. The Area Service Highway route encroaches on a military reservation

There are several reasons why this encroachment is a problem.

B3-2

**Development** follows roads. State-managed lands adjacent to the Goldwater Range will be the first to go into private development because they can easily be sold. Then there will be pressure to transfer federal lands to private ownership. More pressure will build to construct more interchanges along the highway to access these now-private lands. Finally, there will be pressure to open up the Goldwater Range to development and sever the highway from the Goldwater Range. It is ironic that while the City of Peoria is beginning a lobbying campaign for Congress to spend millions to buy land surrounding Luke Air Force Base ("Luke Receiving Key Help in Fight to Remain Open," *The Arizona Republic*, April 6, 2003, p. B-1), the Area Service Highway's proponents are spending millions to not just encroach on land near a military reservation, as has happened at Luke, but to actually build inside the Goldwater Range boundaries.

DEDICATED TO THE PROTECTION OF NATURAL WETLANDS IN AN ARID ENVIRONMENT

**Response to Comment B3-1** Comment is noted in the project record.

**Response to Comment B3-2**

Page 51 of the Draft Environmental Assessment (EA) addressed this development issue. The new highway would increase the rate at which changes in land use occur, but it would not increase the absolute amount of land available for or under pressure for development. There is a sufficient amount of available land to meet the projected development demands, zoning is in place in the unincorporated areas of the County to protect the desired rural land use character of the area, and over the past 20 years the area is and has been growing at a rapid rate compared to the rest of the nation without the presence of the Area Service Highway (ASH).

As the demand for additional industrial/warehouse space in the Yuma area increases, it is expected that undeveloped private properties in the vicinity of the project would ultimately be developed for commercial, residential, and industrial purposes, regardless of the construction of the ASH. These properties include private lands south of County 23<sup>rd</sup> Street on the Avenue E alignment, an area near the County 23<sup>rd</sup> Street/Avenue B intersection, and lands between Business Route 8 and I-8. However, with an ASH connection to I-8, development at these sites could occur at a more rapid rate. Produce packing sheds may be constructed in the vicinity of Araby Road and the railroad just south of I-8. Private lands in the vicinity of County 14<sup>th</sup> Street (west) would develop rapidly after a connection to that location is made from the ASH.

In a December 16, 2002, memorandum from Major C. C. Hale, Deputy Director of the Joint Law Center at the Marine Corps Air Station Yuma (MCASY), to Charles R. Saltzer, MCASY Facilities Manager, Major Hale states that "development of the ASH would act as a buffer to further encroachment on the Barry M. Goldwater Range (BMGR)." Page 22 of the Draft EA states, "MCASY has ... stated a preference for the ASH to be located inside the BMGR so that unwanted encroachment by commercial and residential development adjacent to the roadway can be prevented." In an e-mail (July 1, 2003) from Charles R. Saltzer to Mike Bruder, Arizona Department of Transportation (ADOT) Project Manager, Charles



**Response to Comment B3-2 (continued)**

Saltzer acknowledges,

... [D]evelopment along the ASH from Araby Road south to the BMGR and from the BMGR west to Avenue E would more than likely occur on both sides of the ASH. This development does not encroach on aircraft operations performed within the BMGR or Marine Corps Air Station (MCAS) Yuma. MCAS does not object to development within these areas.

For the 9 miles that the ASH would be located within the BMGR, the Marine Corps would have management responsibility. Mr. Saltzer's e-mail communication of July 1 to Mr. Bruder continues.

Building the ASH within the BMGR would not encourage private development along the road because the property is owned by the Federal Government. This highway would be a high-speed expressway without any development or interchanges on the portion of land within the BMGR. If the alternative route which is outside the BMGR and somewhere within the 2½ miles separating the BMGR from MCAS is used, incompatible encroachment would occur. The alternative would also encourage development under the only remaining overflight pattern for MCAS. Presently the Joint Land Use Plan provides protection to MCAS from incompatible development within this area. If the ASH is built through this area instead of on the BMGR, then pressure ... to build adjacent to the route would occur. MCAS is not the controlling authority for this land; however, MCAS is the controlling authority for land within the BMGR. If encroachment happens in this alternate route area, it would negatively impact on the mission of MCAS.

According to representatives from MCASY there would be *less* cumulative development and resultant encroachment by locating the ASH *within* the BMGR than by locating it on an alignment near—but *outside*—the BMGR. The relevant military inputs reflected in this conclusion about potential encroachment by development have been part of the planning process for the ASH from its earliest conceptions.

**B3**

2

**B3-3**

Safety is another important issue, for both the public and military operations. This area is currently closed to the public. The Area Service Highway would run very close to a rifle range and the Cannon Air Defense Complex. The highway would run within three miles of an explosive ordnance disposal operating area and six miles of a live ordnance jettison area. There are also two target complexes (Cactus West and Moving Sands) within less than fifteen miles from the highway. Regrettably, on April 12, 1992, two Harrier jets crashed to the ground just inside the Goldwater Range and two miles from Foothills homes ("Too Close for Comfort: Crash of Jets Near Homes Shows Danger of Building Near Military Range: MCAS," *The Yuma Daily Sun*, April 15, 1992, pp. 1,9.) According to the newspaper article, "Numerous residents traveling in dune buggies and ATVs tried to find the crash sites after dark Monday after the accident received news coverage." A high-speed, paved highway would only increase the number of curiosity-seekers if a similar event were to occur. The Area Service Highway would cross the Range along most of its western boundary, exposing the traffic using it to a hazardous potential if there were an airborne mishap, such as intentional or unintentional jettisoning of armaments (whether live or not).

**B3-4**

A third issue concerns **consistency with the military mission** for which the Goldwater Range is withdrawn. Withdrawal means that certain uses are prohibited on the Goldwater Range in order to protect the military mission of the lands. These prohibited uses include appropriation under the general land laws, mining, mineral leasing, and geothermal leasing. The Military Lands Withdrawal Act of 1999 (Public Law 106-65) specifically states the permitted uses of the Goldwater Range at Sec. 3031(a)(2). They are:

- (A) an armament and high-hazard testing area;
- (B) training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support;
- (C) equipment and tactics development and testing; and
- (D) other defense-related purposes consistent with the purposes specified in this paragraph.

**B3-5**

In addition, at Sec. 3031(b)(3) of the Military Lands Withdrawal Act, the military is directed to prepare an integrated natural resources management plan. This plan will "include provisions for proper management and protection of the natural and cultural resources of such lands, and for sustainable use by the public of such resources to the extent consistent with the military purposes for which such lands are withdrawn and reserved by this section." Finally, at Sec. 3031(a)(5),

The Secretary of the Navy and the Secretary of the Air Force shall consult with the Secretary of the Interior before using the lands withdrawn and reserved by this section for any purpose other than the purposes specified in paragraph (2).

**B3-6**

It is questionable, at the least, that the construction of a high-speed limited access highway across the Goldwater Range could be considered as contributing to the military mission of the range as defined by the Military Lands Withdrawal Act of 1999, nor does the highway contribute to protection of natural and cultural resources on an area of the Goldwater Range that is presently closed to the public. The Area Service Highway also does nothing to

**B3-7**

**Response to Comment B3-2 (continued)**

The Yuma Metropolitan Planning Organization (YMPO)/ADOT are required by the Metropolitan Planning Regulations to consult and concur with other agencies on issues relating to major metropolitan investments (23 CFR § 450.1 38[a]). The Draft EA (pp. 6, 8) recounts the active participation and support of the military in the planning for this project. A Major Investment Study (MIS) has been conducted for the project. The public and affected agencies, including MCASY, have supported the proposed project through the public meetings that have been held for the MIS and during the last decade in association with the ASH planning. MCASY and the U.S. Navy are cooperating agencies as part of the National Environmental Policy Act (NEPA) process for this project.

Regarding federal government purchases of private property in Luke Air Force Base situation, Mr. Saltzer commented further in his July 1 memorandum:

The money used at Luke Air Force Base ... is to buy private property within the noise zones so that incompatible residential development would not occur. Because the ASH would be located on the BMGR, the Government does not need to purchase land to prevent encroachment because there is no encroachment.

**Response to Comment B3-3**

Mr. Saltzer, in his July 1 memorandum, reported that ADOT had designed the ASH such that the highway avoids the Rifle/Pistol Range safety areas that MCASY provided to ADOT.

The Draft EA (p. 22) describes the effects of the ASH on the rifle range:

The proposed roadway would displace the 1,000-yard firing position at the MCASY Rifle Range. MCASY has indicated that the 1,000-yard firing position is no longer needed. In addition, to prevent motorists from viewing

**Response to Comment B3-3 (continued)**

the firing positions at the rifle range, a visual screen would be designed. The ASH alignment and modifications to the parking lot would not encroach on the Surface Danger Zone associated with the MCASY Rifle Range (Figure 8).

Mr. Saltzer, in the July 1 memorandum, commented that the fence between the ASH and the rifle range would also eliminate any “startle effect” to drivers on the ASH. He also commented on the 1992 Harrier jet accident and on the issue of jettisoning armaments:

[It] occurred seven miles from the proposed alignment of the ASH. The accident highlighted the effectiveness of using and complying with safety areas since both aircraft landed on the range and not on private property.

The hazardous potential to personnel driving on the ASH due to the “intentional or unintentional jettisoning of armaments” is no greater than to those personnel driving everyday on Hwy 80/32<sup>nd</sup> Street within ¼ to ¾ mile from the end of the two runways located at MCAS Yuma.

The ASH would be fenced on both sides providing a physical barrier to curiosity seekers from entering the BMGR where presently none exists.

**Response to Comment B3-4**

Though the BMGR should be primarily used for military purposes, as the commenter noted, exceptions are allowable under the law when appropriate measures and agreements are met. According to the *Proposed Integrated Natural Resource Management Plan* (February 2003), the current primary mission of both BMGR-East and BMGR-West is military aircrew training, including advanced training for student aircrews transitioning to frontline combat aircraft and readiness training for aircrews in operational combat units. As a secondary mission, the range has also been used periodically for testing and some other defense-related purposes.

**Response to Comment B3-4 (continued)**

The BMGR is made available for military purposes through authorization of the Military Land Withdrawal Act of 1999. Within this Act, Section 3014, entitled, Management of Lands reads,

(a)(3) Non-Military Uses.

- (A) In General. – All nonmilitary use of the lands referred to in paragraph (2), other than the uses described in that paragraph, would be subject to such conditions and restrictions as may be necessary to permit the military use of such lands for the purpose specified in or authorized pursuant to this subtitle.
- (B) Leases, Easements, and Rights-of-Way. – The Secretary of the Interior may issue a lease, easement, right-of-way, or other authorization with respect to the non-military use of lands referred to in paragraph (2) only with the concurrence of the Secretary of the military department concerned.

In addition to reviewing the responses for comments B3-2 and B3-3, above, please consider this response from Mr. Saltzer in his July 1 memorandum:

The requirement for the Secretary of the Navy and the Secretary of the Air Force to consult with the Secretary of the Interior before using the withdrawn lands for a purpose other than specified in Sec. 3031 (a)(2) of the Military Lands Withdrawal Act has been accomplished. The Bureau of Land Management has been an active participant in the ASH discussions and plans for years, even preceding the 1999 withdrawal legislation.

**Response to Comment B3-5**

Refer to the response to comments B3-3 and B3-4.

Nowhere could the reference to “contributing to the military mission” be found, nor is there a requirement for a contributing element. As the commenter referenced, Sec. 3031 (a)(5),

**Response to Comment B3-5 (continued)**

The Secretary of the Navy and the Secretary of the Air Force would consult with the Secretary of the Interior before using the lands withdrawn and reserved by this section for any purpose other than the purposes specified in paragraph (2).

Also within this Act, Section 3014, entitled, Management of Lands reads,

(a)(3) Non-Military Uses.

(A) In General. – All nonmilitary use of the lands referred to in paragraph (2), other than the uses described in that paragraph, would be subject to such conditions and restrictions as may be necessary to permit the military use of such lands for the purpose specified in or authorized pursuant to this subtitle.

(B) Leases, Easements, and Rights-of-Way. – The Secretary of the Interior may issue a lease, easement, right-of-way, or other authorization with respect to the non-military use of lands referred to in paragraph (2) only with the concurrence of the Secretary of the military department concerned.

In addition to reviewing the responses for comments B3-2 and B3-3, above, please consider this response from Mr. Saltzer in his July 1 memorandum:

The requirement for the Secretary of the Navy and the Secretary of the Air Force to consult with the Secretary of the Interior before using the withdrawn lands for a purpose other than specified in Sec. 3031 (a)(2) of the Military Lands Withdrawal Act has been accomplished. The Bureau of Land Management has been an active participant in the ASH discussions and plans for years, even preceding the 1999 withdrawal legislation.

Section 3031(b) (3) Integrated Natural Resources Management Plan.— also includes,

**Response to Comment B3-5 (continued)**

- (C) Any disagreement concerning the contents of a plan under this paragraph, or any subsequent amendments to the plan, would be resolved by the Secretary of the Navy for the West Range and the Secretary of the Air Force for the East Range, after consultation with the Secretary of the Interior through the State Director, Bureau of Land Management and, as appropriate, the Regional Director, United States Fish and Wildlife Service. This authority may be delegated to the installation commanders.
- (D) Any plan under this paragraph would be prepared and implemented in accordance with the Sikes Act (16 U.S.C. 670 et seq.) and the requirements of this section.
- (E) A plan under this paragraph for lands withdrawn and reserved by this section would —
- (i) include provisions for proper management and protection of the natural and cultural resources of such lands, and for sustainable use by the public of such resources to the extent consistent with the military purposes for which such lands are withdrawn and reserved by this section;

**Response to Comment B3-6**

The ASH would be fenced on both sides providing a physical barrier to curiosity seekers from entering the BMGR where presently none exists.

**Response to Comment B3-7**

Public recreation is not an identified goal of the ASH. ADOT's Mission, *To provide a safe and efficient transportation system, together with the means of revenue collection and licensing for Arizona* [emphasis added], identifies that providing public recreation opportunities is not a priority for ADOT projects. Furthermore, the identified core business functions of ADOT are 1) develop and operate the transportation infrastructure, 2) license and register, and 3) manage revenue. Recreation is not a primary objective or function of the agency.

**B3**

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- B3-7 (cont'd)** further recreation by the general public—or at least it's not supposed to. If the public is excluded or discouraged from using the highway because it is intended for trucks carrying hazardous cargo from Mexico to I-8, it will serve no recreational purpose. On the other hand, if the public is encouraged to use the road, it will only compound the encroachment on the Goldwater Range and provide access, even if illicit, for the curious.
- B3-8**
- 2. The Area Service Highway route encourages sprawl**
- B3-9** Routing this road through the Goldwater Range encourages development at the peripheries of land in the Yuma-San Luis area. Instead of encouraging growth outward from already developed areas, the highway encourages leapfrog development in order to take advantage of the high-speed access the highway provides. This type of development results in more expensive tax-supported services, such as law enforcement, fire, water, sewer, sanitation, and schools. Remember, development follows roads.
- 3. The Area Service Highway doesn't benefit the people who are paying for it**
- B3-10** Taxpayers are footing the bill for the Area Service Highway. However, instead of providing them with a freeway to serve the transportation needs of the crowded San Luis-Gadsden-Somerton-Yuma corridor, the highway is routed far from centers of population. The road's main benefit would be for owners of border factories (maquiladoras) in the San Luis, Mexico area. Moreover, the public is being discouraged from using the road because of the amount of truck traffic that the road's proponents project for it. The Yuma Metropolitan Planning Organization claims that 1200 trucks will be using the route daily by 2015 (YMPO web page). In addition, the public is being discouraged from using the highway because some trucks will be carrying hazardous materials.
- B3-11**
- B3-12**
- B3-13**
- B3-14** However, as population grows in the Foothills area east of Yuma, the Area Service Highway will be running right through a populated area north of the Goldwater Range. It will also run through a populated area as San Luis expands to the east. This will negate the supposed advantage of locating the highway in currently less-developed areas in order to route hazardous material transport away from humans, but the road would still not benefit the majority of the population in the San Luis to Yuma corridor.
- B3-15** The amount of hazardous material carried on the Area Service Highway would also be only a fraction of the hazardous materials carried in the Yuma-San Luis area. Every day hazardous materials pass through and arrive at and depart from Yuma by train on the Union Pacific and by truck on I-8 and other routes. Unfortunately, there is no way to route all hazardous material transport to areas unpopulated by humans. Instead, the hazardous materials need to be neutralized where they are produced so they don't need to be transported or at least can be transported without danger to the public and the environment.
- B3-16** Data from the Yuma Metropolitan Planning Organization website show that there is substantial vehicle traffic between San Luis, Somerton, and Yuma. Many people drive to work from both San Luis Rio Colorado, Sonora and San Luis, Arizona to jobs in Yuma, and others go to work in the other direction. There is substantial traffic from the Yuma-San

**Response to Comment B3-7 (continued)**

Construction of any alternative would not, in itself, discourage the public from using the highway. It would provide for more effective regional transportation for all vehicles, whether commercial or private. The highway is intended to provide for through traffic. Furthermore, ADOT would not erect signs designating the road as a commercial route nor exclude public use of the highway.

The objective of removing commercial traffic and hazardous cargo from populated and congested areas (Draft EA, p. 4) could mean that recreational pursuits of the general public would be facilitated: it would be easier for the public to reach more remote and less congested areas. Whatever limitations the Preferred Alternative would have in serving recreational purposes, these limitations would be shared by any alignment meeting the project's purpose and need.

**Response to Comment B3-8**

Refer to the response for comment B3-3.

**Response to Comment B3-9**

According to Yuma County, there is sufficient available land to accommodate projected 2010 population growth. The *Yuma County 2010 Comprehensive Plan* shows substantial portions of land west of the ASH zoned as Agriculture/Rural Preservation to maintain the rural character of the area by keeping the farmland and a low density of housing development. As the demand for additional industrial/warehouse space in the Yuma area increases, it is expected that undeveloped private properties in the vicinity of the project would ultimately be developed for commercial, residential, and industrial purposes, regardless of the construction of the ASH. However, with an ASH connection to I-8, development at these sites could occur at a more rapid rate.

As the ASH is designed for primarily commercial traffic, limited residential development should occur initially. Since the YMPO is a cooperating agency for this project, oversight for planning in the area can be maintained to reduce the potential for leapfrog development.

**Response to Comment B3-10**

The objectives for the highway are clearly listed in the Draft EA (p. 4), one of which is the explicit relief of existing and future congestion on US 95 through the city of Yuma. Yuma County has three county sales taxes that are applied to certain transactions within the county limits. Each sales tax is one-half of 1 percent (0.5%). The Capital Projects Sales Tax, one of these three, was approved by voters on September 12, 2000, and became effective on January 1, 2001. The County may use revenues from this tax only for capital projects, which include highways. The ballot used in the election listed each project to be financed with the tax collected and the estimated costs of each project. The tax expires if and when the total amount of estimated costs for all of the projects has been raised.

Of the five economic development projects associated with this 2000 tax initiative, one was the ASH. Through this tax that Yuma County voters levied on themselves, \$13.15 million is to go toward funding the ASH. County voters approved this tax with full knowledge of the purpose and need for the ASH and of its likely corridor. Although a given county resident may not become a frequent user of the ASH, each resident would receive benefits from the highway meeting its intended purposes, including some general economic benefits for the county and improved access and employment opportunities that that access may stimulate.

The County's share would represent less than a third of the ASH's estimated construction cost of \$72 million; the remaining two-thirds of the cost would be covered by federal funds, i.e., not with dollars collected directly and specifically only from Yuma County.

According to the Draft EA (p.12), the Preferred Alternative would "provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden." These are all benefits to County residents, visitors, and through traffic.



**Response to Comment B3-1 1**

Refer to the Final EA, Section II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

**Response to Comment B3-12**

The objectives for the highway are clearly listed in the Draft EA (p. 4); of the three specific objectives, two are directed toward facilitating the transport of goods across the International Border and toward removing commercial traffic from populated and congested areas. Through this redirection of commercial traffic to the ASH, the public would be freer to use existing transportation links without the congestion and conflicts with commercial transport that would otherwise be anticipated.

Construction of an alternative that avoids existing population centers would not, in itself, discourage the public from using the highway. It would provide for more effective regional transportation for all vehicles, whether commercial or private. Furthermore, ADOT would not sign the road as a commercial route.

**Response to Comment B3-13**

Hazardous materials and waste are transported along almost all state highways. There are segments of the Arizona State Highway System that do not allow the presence of trucks transporting “hazardous” cargo. These sections are identified when the design of the highway is such that special conditions exist which would exacerbate the repercussions of an accident. The design of the ASH would not create a situation warranting the exclusion of hazardous materials.

Hazardous materials spills/concerns on the ASH would be treated the same as any hazardous materials incidents on the state roadway system. Spills/issues would be contained within the ADOT right-of-way if possible, and appropriately treated/ remediated. The ADOT

B3

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B3-16  
(cont'd)

Luis, Arizona area to Mexico for shopping and services, and similar traffic from Mexico to San Luis, Arizona and Yuma. There are two main routes from San Luis to Yuma—US 95, and a combination of County 23<sup>rd</sup> to Avenue B, joining US 95 at the Cocopah Casino. Using Yuma Metropolitan Planning Organization web site data, at various measuring points along US 95 from San Luis to its junction with Avenue B, the average of four twenty-four hour quarterly traffic counts from February through November 2002 was a minimum of 5392 at US 95 east of Avenue G to 10,754 at US 95 north of Piceno Road. Along County 23<sup>rd</sup> and Avenue B from San Luis to its junction with US 95, the minimum average count was 6847 at Avenue B north of County 19<sup>th</sup> Street to a maximum of 7851 at County 23<sup>rd</sup> Street west of Avenue B. The average count at US 95 south of County 14<sup>th</sup> Street was 11,121. Given this amount of traffic, and the fact that taxpayers are paying for the Area Service Highway, people in the San Luis-Yuma traffic corridor deserve a freeway, rather than the widening and straightening of US 95 that is occurring at a glacial pace, and which will not be a limited access road. Locating the route of the Area Service Highway farther to the west would provide the road that people in the San Luis-Yuma corridor deserve. The importance of locating the Area Service Highway much closer to San Luis, Gadsden, Somerton, and Yuma becomes more apparent in the next section.

4. The economic premises for building the Area Service Highway along its proposed route may be short-lived or even faulty, resulting in a road that will serve nobody

B3-17

The two main reasons given for building the Area Service Highway along its proposed route are to serve border industries (maquiladoras) and a proposed air cargo terminal at Yuma International Airport.

However, the maquiladora industry is already in decline, even before the road is built. A November 22, 2002 article by Louie Villalobos in *The Sun* ("Jobs Along Border in Danger", pp. A-1, A-6) reports that the number of factory workers in San Luis Río Colorado has dropped from 13,000 to 8000 and that along the length of the U.S.-Mexico border, 250,000 jobs in maquiladoras have been lost. These jobs are moving to southern Mexico and China because manufacturers can take advantage of cheaper labor there.

B3-18

The air cargo terminal would actually be closer to I-8 than the Area Service Highway. Avenue 3E, which is a state highway, could be upgraded to handle the truck traffic much more inexpensively than building the Area Service Highway.

In addition, the air cargo terminal concept is one that much more often fails than succeeds. According to a *Wall Street Journal* article ("Fields of Dreams: All-Freight Airports, Touted as Way to Lure Firms, Pose Big Risks, December 2, 1992, pp. A1, A7), "Cargo carriers say they need to be near big distribution markets and to have access to the cheap belly space of passenger airliners." Yuma supports only limited commuter passenger service. The article points out that even if there is already a well-developed industrial base in an area, a successful air cargo operation is the exception rather than the rule.

B3-19

With the maquiladora industry in decline, and an air cargo terminal a risky proposition in an area that has minimal air passenger service and limited industry, the Area Service Highway

**Response to Comment B3-13 (continued)**

Motor Vehicle Division has a system in place to respond to all accidents and spills involving hazardous cargo/waste along the State Highway System to ensure that remediation, where applicable, follows state and federal guidelines.

**Response to Comment B3-14**

As population increases in the vicinity of the ASH as well as in other parts of the region, the need to transport hazardous cargo would not be eliminated; it would, in all likelihood, increase. Efforts to plan, construct, and operate a highway system that both avoids population centers and transports the byproducts of those very centers' production efforts would never be noncompeting objectives. The objectives for the highway are clearly listed in the Draft EA (p. 4), one of which is the explicit relief of existing and future congestion on US 95 through the city of Yuma. Providing this relief would "benefit the majority of the population in the San Luis to Yuma corridor."

**Response to Comment B3-15**

Comment is noted in the project record.

**Response to Comment B3-16**

Yuma County has three county sales taxes that are applied to certain transactions within the county limits. Each sales tax is one-half of 1 percent (0.5%). The Capital Projects Sales Tax, one of these three, was approved by voters on September 12, 2000, and became effective on January 1, 2001. The County may use revenues from this tax only for capital projects, which include highways. The ballot used in the election listed each project to be financed with the tax collected and the estimated costs of each project. The tax expires if and when the total amount of estimated costs for all of the projects has been raised.

Of the five economic development projects associated with this 2000 tax initiative, one was the ASH. Through this tax that Yuma County voters levied on themselves, \$13.15 million is to go toward funding the ASH. County voters approved this tax with full knowledge of the purpose and need for the ASH and of its likely corridor. Although a given county resident may not become a frequent user of the ASH, each resident would receive benefits from the highway

**Response to Comment B3-16 (continued)**

meeting its intended purposes, including some general economic benefits for the county and improved access and employment opportunities that that access may stimulate.

The County's share would represent less than a third of the ASH's estimated construction cost of \$72 million; the remaining two-thirds of the cost would be covered by federal funds, i.e., not with dollars collected directly and specifically only from Yuma County.

According to the Draft EA (p.12), the Preferred Alternative would "provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden." These are all benefits to the population the commenter noted.

**Response to Comment B3-17**

The objectives for the highway are clearly listed in the Draft EA (p. 4); one of the three is the explicit relief of existing and future congestion on US 95 through the city of Yuma. Selection of a corridor or an alignment for the ASH was not predicated on the existence of or the economic health of an air cargo terminal.

Refer to the Final EA, Section II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

The relative economic health of the maquiladora industry is not directly relevant to the decision to build the ASH because the objectives for building the highway do not include such direct support

# B3

5

B3-19  
(cont'd)

could easily become a white elephant if it is built along its proposed route through the Goldwater Range. However, if it were located farther to the west, in the San Luis-Yuma traffic corridor, it would still serve the needs of Yuma County residents and winter visitors regardless of the success or failure of the maquiladoras and the proposed air cargo terminal. It's the difference between a potential waste of taxpayer dollars (the Goldwater Range route) and a wise investment in the transportation needs of Yuma County's residents (a westerly route).

## 5. The proposed route of the Area Service Highway will destroy prime habitat for the Flat-tailed Horned Lizard

The status of the Flat-tailed Horned Lizard has fluctuated since it was first proposed in 1993 for listing under the Endangered Species Act, and has still not been settled. Having been denied listing by the Fish & Wildlife Service in January 2003, environmental organizations, scientists, and scientific organizations in May 2003 sent notice to the Fish & Wildlife Service that they will seek to have the Flat-tailed Horned Lizard listed under the Endangered Species Act. Even short of listing, the lizard currently is the subject of a *Flat-tailed Horned Lizard Rangewide Management Strategy* issued in May 1997 by the Working Group of Flat-tailed Horned Lizard Interagency Coordinating Committee.

B3-20

Although the rangewide management strategy establishes management areas in which actions that affect the lizard are regulated, the agreement is voluntary. The document is also contradictory in some ways. For example, a Yuma Desert Management Area was established which includes public lands west of the Goldwater Range. These public lands would be crossed by the proposed route of the Area Service Highway. Part 2.2.1 of the Planning Actions of the *Flat-tailed Horned Lizard Rangewide Management Strategy* includes provisions that every effort should be taken to limit disturbance of lizard habitat in management areas to less than ten acres. In addition, Part 2.2.1 provides that cumulative new disturbance in each management area (such as the Yuma Desert Management Area) may not exceed one percent of the total acreage of the management area (MA). Yet, the document also conveniently provides in Planning Action 1.1 that "If the proposed Area Service Highway is constructed along a portion of the boundary of the MA, the east and south side of the right-of-way will be the new western and northern boundary of the MA, as appropriate." (*Flat-tailed Horned Lizard Rangewide Management Strategy*, p. 35.) The Area Service Highway is given a special status which apparently overrides the rule of no more than one percent of the total acreage of the management area may be disturbed, by erasing thousands of acres of the management area from the map.

B3-21

In spite of a variety of attempts to census the Flat-tailed Horned Lizard population, an accurate figure has not yet been produced. Nor have the mitigation measures proposed in the rangeland management strategy been proven effective. Because of this, special care must be taken to protect the lizard's habitat. Building a freeway across what was designated a management area, notwithstanding proposed (but unproven) mitigation, is not an effective way to protect the Flat-tailed Horned Lizard, especially when there are many other reasons to locate the Area Service Highway farther to the west.

B3-22

## Response to Comment B3-17 (continued)

for border industries nor is it relevant to the decision to build the ASH along the Preferred Alternative.

## Response to Comment B3-18

Selection of a corridor or an alignment for the ASH was not predicated on the existence or economic health of an air cargo terminal.

Yuma County and the Yuma urban area have experienced substantial growth in the last several decades, and business development, increased tourism, and international trade would continue to contribute to economic growth in the area. Population growth is expected to increase an additional 60 percent in the county before the year 2015. An increase in commercial traffic would result from population growth in the Yuma area, enactment of North American Free Trade Agreement initiatives, industrial growth in Mexico, and a strong U.S. economy.

Refer to the Final EA, Section II. Alternatives Considered for the reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

## Response to Comment B3-19

The relative economic health of the maquiladora industry at any point in time is not directly relevant to the decision to build the ASH because the objectives for building the highway do not include such direct support for border industries nor is it relevant to the decision to build the ASH along the Preferred Alternative. Selection of a corridor or an alignment for the ASH was not predicated on the existence of or the economic health of an air cargo terminal.

The Yuma County Capital Projects Sales Tax, of one-half of 1 percent (0.5%), was approved by voters in 2000, and became effective on

**Response to Comment B3-19 (continued)**

January 1, 2001. The ballot used in the election listed each project to be financed with the tax collected, including the ASH, and the estimated costs of each project. County voters approved this tax with full knowledge of the purpose and need for the ASH and of its likely corridor. Although a given county resident may not become a frequent user of the ASH, each resident would receive benefits from the highway meeting its intended purposes, including some general economic benefits for the county and improved access and employment opportunities that that access may stimulate.

According to the Draft EA (p.12), the Preferred Alternative would “provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden.” These are all benefits to County residents, visitors, and through traffic.

**Response to Comment B3-20**

ADOT and the Federal Highway Administration (FHWA) have closely followed the status of the flat-tailed horned lizard (FTHL) throughout all phases of the project to date, and would continue to do so. Three separate Biological Evaluations have been prepared to determine the project’s potential impacts to the FTHL. On November 7, 2002, FHWA included the FTHL in a request for formal consultation pursuant to Section 7 with the US Fish and Wildlife Service (FWS) on the project’s potential impacts to listed and proposed species. In a letter dated January 27, 2003, FWS informed FHWA that the proposed rule to list the FTHL as threatened had been withdrawn and Section 7 consultation for the FTHL would not be completed.

Because of the January 3, 2003, withdrawal of the proposed rule, the FTHL does not currently receive protection under ESA. In the withdrawal of the proposed rule, FWS determined that listing the FTHL was not warranted because “threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.” FWS considered the ASH in its decision to withdraw the proposed

**Response to Comment B3-20 (continued)**

rule, stating that the impact of the ASH “does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act.” Should the FTHL become listed under ESA before the project is completed, FHWA would reinitiate Section 7 consultation with FWS. ADOT and FHWA are aware of the *2003 FTHL Rangewide Management Strategy* (RMS). Although the Conservation Agreement and accompanying RMS are voluntary, ADOT and FHWA have worked closely with signatories of the FTHL Conservation Agreement during all phases of the project. The suite of mitigation actions included for the FTHL is consistent with the RMS and has been reviewed by the FTHL Interagency Coordinating Committee. See Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA for a complete discussion of these mitigation actions.

**Response to Comment B3-21**

The ASH was given “special status” because the planning process for the ASH began in the mid to late 1980s, well before the 1997 FTHL RMS was adopted. However, even if the ASH were not excluded from the Yuma Desert MA, the ASH would still comply with the 1997 RMS (and its 2003 revision). In addition, refer to the response to comment B3-20.

**Response to Comment B3-22**

ADOT and FHWA rely on the US Fish and Wildlife Service, Arizona Game and Fish Department and Flat-tailed Horned Lizard (FTHL) Interagency Coordinating Committee to provide input into the development of FTHL mitigation measures that are based on the best available scientific data. ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop a mitigation approach that is consistent with the *FTHL Rangewide Management Strategy, 2003 Revision*, and that would provide the most effective protection to local FTHL populations. It is understood by all parties that there is incomplete information on certain aspects of FTHL ecology and conservation needs. FTHL mitigation for the ASH includes a suite of actions and monitoring of their effectiveness. The mitigation actions include FTHL barrier fencing, fencing of right-of-ways and portions of the Yuma Desert Management Area to preclude

B3 6

B3-23

The *Flat-tailed Horned Lizard Rangewide Management Strategy* is an attempt to avoid listing a species that is obviously in need of such protection. The *Rangewide Management Strategy* document itself warns at p. 30 that "Lack of compliance among the cooperators, a change of circumstances, or other reasons may alter the expected result of this strategy. If threats to the flat-tailed horned lizard or its habitat are not reduced, the USFWS may proceed with another proposed or emergency listing."

Even though the Fish & Wildlife Service has signed off on the rangewide management strategy, they were not in support of the proposed route of the Area Service Highway. In a letter of November 9, 1995, the Fish & Wildlife Service envisioned the rangewide management strategy going into effect and recommended mitigation and compensation for the Area Service Highway. At the same time, the letter (Letter from Sam Spiller, Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish & Wildlife Service to Robert A. Vaughan, Executive Director, Yuma Metropolitan Planning Organization, November 9, 1995, reference: AESO/SE 2-21-95-1-479) stated

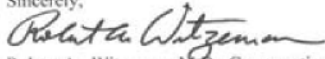
B3-24

We would like to discuss the proposed route of the highway with you and your staff. As proposed, the highway would traverse high quality, relatively undisturbed flat-tailed horned lizard habitat in the vicinity of the intersection of Avenue 4E and County 23<sup>rd</sup>. An alternative route to the north and west that adjoined agricultural development would be much less intrusive and damaging to the Yuma Desert Management Area. The route would also be shorter, presumably reducing construction costs. The sharp turn at the intersection of Avenue 4E and County 23<sup>rd</sup> would also be eliminated, presumably reducing safety hazards. Much of the land on this alternative route is owned by the State Land Department, but these lands could be acquired through purchase, or by friendly condemnation or a third-party land exchange whereby the lands would become Bureau of Land Management lands that could then be used for the highway pursuant to a right-of-way agreement. We believe that such an arrangement would benefit the flat-tailed horned lizard and make for a better highway proposal.

In conclusion, the Maricopa Audubon Society recommends that the proposed route of the Area Service Highway be rejected and that a different route much farther to the west be utilized, close to the population centers of San Luis, Gadsden, Somerton, and Yuma. This will provide maximum benefits to the people of Yuma County and minimal effects on the natural environment, including the Flat-tailed Horned Lizard.

Please keep us informed of developments or actions on this issue.

Sincerely,



Robert A. Witzeman, M.D., Conservation Chair  
Maricopa Audubon Society  
witzeman@cox.net

### Response to Comment B3-22 (continued)

vehicle access off of designated roads and trails, biological monitors during construction, and compensation of lost habitat. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

### Response to Comment B3-23

In the January 3, 2003, withdrawal of the proposed rule, FWS determined that listing the FTHL was not warranted because "threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range." FWS considered the ASH in its decision to withdraw the proposed rule, stating that the ASH "does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act."

### Response to Comment B3-24

The Final EA has included additional discussion on the corridor selection process, as well as the alternatives considered. The evaluation of alternatives considered impacts to the flat-tailed horned lizard in addition to a variety of other factors. Refer to the Final EA, Section II. Alternatives Considered.

## B4



YUMA AUDUBON SOCIETY  
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YUMA, ARIZONA 85366-6395

### REASONS TO ADOPT AN ALTERNATIVE TO THE PROPOSED ROUTE OF THE AREA SERVICE HIGHWAY

#### Background

According to the Yuma Metropolitan Planning Organization web page ([www.ympo.org/ash.htm](http://www.ympo.org/ash.htm)), "The Area Service Highway is a 23 mile, 4 lane highway linking Interstate 8 at the Araby Road Interchange to Avenue E at County 23<sup>rd</sup> Street in San Luis, Arizona." In its southward route from I-8 to County 23<sup>rd</sup>, the highway would cross approximately nine miles of the Barry M. Goldwater Range. It is designed to be a "high-speed, limited access highway" which will "serve increased industrial activity on both sides of the U.S./Mexico border." It is also intended to "enhance the accessibility of the Airport" as "Yuma International Airport expands its air cargo operations" in order to "play a role in Pacific Rim trade." The estimated cost of the highway is \$86,700,000.

B4-1

Unfortunately, as detailed below, there are many reasons to reject the route that was selected for the Area Service Highway. A different route, farther to the west of the selected route, would eliminate most of these objections.

#### 1. The Area Service Highway route encroaches on a military reservation

There are several reasons why this encroachment is a problem.

B4-2

Development follows roads. State-managed lands adjacent to the Goldwater Range will be the first to go into private development because they can easily be sold. Then there will be pressure to transfer federal lands to private ownership. More pressure will build to construct more interchanges along the highway to access these now-private lands. Finally, there will be pressure to open up the Goldwater Range to development and sever the highway from the Goldwater Range. It is ironic that while the City of Peoria is beginning a lobbying campaign for Congress to spend millions to buy land surrounding Luke Air Force Base ("Luke Receiving Key Help in Fight to Remain Open," *The Arizona Republic*, April 6, 2003, p. B-1), the Area Service Highway's proponents are spending millions to not just encroach on land near a military reservation, as has happened at Luke, but to actually build inside the Goldwater Range boundaries.

**Response to Comment B4-1** Comment is noted in the project record.

#### **Response to Comment B4-2**

Page 51 of the Draft Environmental Assessment (EA) addressed this development issue. The new highway would increase the rate at which changes in land use occur, but it would not increase the absolute amount of land available for or under pressure for development. There is a sufficient amount of available land to meet the projected development demands, zoning is in-place in the unincorporated areas of the County to protect the desired rural land use character of the area, and over the past 20 years the area is and has been growing at a rapid rate compared to the rest of the nation without the presence of the Area Service Highway (ASH).

As the demand for additional industrial/warehouse space in the Yuma area increases, it is expected that undeveloped private properties in the vicinity of the project would ultimately be developed for commercial, residential, and industrial purposes, regardless of the construction of the ASH. These properties include private lands south of County 23<sup>rd</sup> Street on the Avenue E alignment, an area near the County 23<sup>rd</sup> Street/Avenue B intersection, and lands between Business Route 8 and I-8. However, with an ASH connection to I-8, development at these sites could occur at a more rapid rate. Produce packing sheds may be constructed in the vicinity of Araby Road and the railroad just south of I-8. Private lands in the vicinity of County 14<sup>th</sup> Street (west) would develop rapidly after a connection to that location is made from the ASH.

In a December 16, 2002, memorandum from Major C. C. Hale, Deputy Director of the Joint Law Center at the Marine Corps Air Station Yuma (MCASY), to Charles R. Saltzer, MCASY Facilities Manager, Major Hale states that "development of the ASH would act as a buffer to further encroachment on the Barry M. Goldwater Range (BMGR)." Page 22 of the Draft EA states, "MCASY has ... stated a preference for the ASH to be located inside the BMGR so that unwanted encroachment by commercial and residential development adjacent to the roadway can be prevented." In an e-mail (July 1, 2003) from Charles R. Saltzer to Mike Bruder, Arizona



Department of Transportation (ADOT) Project Manager, Charles Saltzer acknowledges,

... [D]evelopment along the ASH from Araby Road south to the BMGR and from the BMGR west to Avenue E would more than likely occur on both sides of the ASH. This development does not encroach on aircraft operations performed within the BMGR or Marine Corps Air Station (MCAS) Yuma. MCAS does not object to development within these areas.

For the 9 miles that the ASH would be located within the BMGR, the Marine Corps would have management responsibility. Mr. Saltzer's e-mail communication of July 1 to Mr. Bruder continues,

Building the ASH within the BMGR would not encourage private development along the road because the property is owned by the Federal Government. This highway would be a high-speed expressway without any development or interchanges on the portion of land within the BMGR. If the alternative route which is outside the BMGR and somewhere within the 2½ miles separating the BMGR from MCAS is used, incompatible encroachment would occur. The alternative would also encourage development under the only remaining overflight pattern for MCAS. Presently the Joint Land Use Plan provides protection to MCAS from incompatible development within this area, If the ASH is built through this area instead of on the BMGR, then pressure ... to build adjacent to the route would occur. MCAS is not the controlling authority for this land; however, MCAS is the controlling authority for land within the BMGR. If encroachment happens in this alternate route area, it would negatively impact on the mission of MCAS.

According to representatives from MCASY, there would be *less* cumulative development and resultant encroachment by locating the ASH *within* the BMGR than by locating it on an alignment near—but *outside*—the BMGR. The relevant military inputs reflected in this

**Response to Comment B38-10 (continued)**

**Response to Comment B4-2 (continued)**

conclusion about potential encroachment by development have been part of the planning process for the ASH from its earliest conceptions.

The Yuma Metropolitan Planning Organization (YMPO)/ADOT are required by the Metropolitan Planning Regulations to consult and concur with other agencies on issues relating to major metropolitan investments (23 CFR § 450.1 38[a]). The Draft EA (pp. 6, 8) recounts the active participation and support of the military in the planning for this project. A Major Investment Study (MIS) has been conducted for the project. The public and affected agencies, including MCASY, have supported the proposed project through the public meetings that have been held for the MIS and during the last decade in association with the ASH planning. MCASY and the U.S. Navy are cooperating agencies as part of the National Environmental Policy Act (NEPA) process for this project.

Regarding federal government purchases of private property in Luke Air Force Base situation, Mr. Saltzer commented further in his July 1 memorandum:

The money used at Luke Air Force Base ... is to buy private property within the noise zones so that incompatible residential development would not occur. Because the ASH would be located on the BMGR, the Government does not need to purchase land to prevent encroachment because there is no encroachment.

**Response to Comment B4-3**

Mr. Saltzer, in his July 1 memorandum, reported that ADOT had designed the ASH such that the highway avoids the Rifle/Pistol Range safety areas that MCASY provided to ADOT.

The Draft EA (p. 22) describes the effects of the ASH on the rifle range:

The proposed roadway would displace the 1,000-yard firing position at the MCASY Rifle Range. MCASY has indicated that the 1,000-yard firing position is no longer

**B4**

**B4-3**

**Safety** is another important issue, for both the public and military operations. This area is currently closed to the public. The Area Service Highway would run very close to a rifle range and the Cannon Air Defense Complex. The highway would run within three miles of an explosive ordnance disposal operating area and six miles of a live ordnance jettison area. There are also two target complexes (Cactus West and Moving Sands) within less than fifteen miles from the highway. Regrettably, on April 12, 1992, two Harrier jets crashed to the ground just inside the Goldwater Range and two miles from Foothills homes ("Too Close for Comfort: Crash of Jets Near Homes Shows Danger of Building Near Military Range: MCAS," *The Yuma Daily Sun*, April 15, 1992, pp. 1,9.) According to the newspaper article, "Numerous residents traveling in dune buggies and ATVs tried to find the crash sites after dark Monday after the accident received news coverage." A high-speed, paved highway would only increase the number of curiosity-seekers if a similar event were to occur. The Area Service Highway would cross the Range along most of its western boundary, exposing the traffic using it to a hazardous potential if there were an airborne mishap, such as intentional or unintentional jettisoning of armaments (whether live or not).

**B4-4**

A third issue concerns **consistency with the military mission** for which the Goldwater Range is withdrawn. Withdrawal means that certain uses are prohibited on the Goldwater Range in order to protect the military mission of the lands. These prohibited uses include appropriation under the general land laws, mining, mineral leasing, and geothermal leasing. The Military Lands Withdrawal Act of 1999 (Public Law 106-65) specifically states the permitted uses of the Goldwater Range at Sec. 3031(a)(2). They are:

- (A) an armament and high-hazard testing area;
- (B) training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support;
- (C) equipment and tactics development and testing; and
- (D) other defense-related purposes consistent with the purposes specified in this paragraph.

**B4-5**

In addition, at Sec. 3031(b)(3) of the Military Lands Withdrawal Act, the military is directed to prepare an integrated natural resources management plan. This plan will "include provisions for proper management and protection of the natural and cultural resources of such lands, and for sustainable use by the public of such resources to the extent consistent with the military purposes for which such lands are withdrawn and reserved by this section." Finally, at Sec. 3031(a)(5),

The Secretary of the Navy and the Secretary of the Air Force shall consult with the Secretary of the Interior before using the lands withdrawn and reserved by this section for any purpose other than the purposes specified in paragraph (2).

needed. In addition, to prevent motorists from viewing the firing positions at the rifle range, a visual screen would be designed. The ASH alignment and modifications to the parking lot would not encroach on the Surface Danger Zone associated with the MCASY Rifle Range (Figure 8).

Mr. Saltzer, in the July 1 memorandum, commented that the fence between the ASH and the rifle range would also eliminate any “startle effect” to drivers on the ASH. He also commented on the 1992 Harrier jet accident and on the issue of jettisoning armaments:

[It] occurred seven miles from the proposed alignment of the ASH. The accident highlighted the effectiveness of using and complying with safety areas since both aircraft landed on the range and not on private property.

The hazardous potential to personnel driving on the ASH due to the “intentional or unintentional jettisoning of armaments” is no greater than to those personnel driving everyday on Hwy 80/32<sup>nd</sup> Street within ¼ to ¾ mile from the end of the two runways located at MCAS Yuma.

The ASH would be fenced on both sides providing a physical barrier to curiosity seekers from entering the BMGR where presently none exists.

#### **Response to Comment B4-4**

In addition to the reviewing the responses for comments B4-2 and B4-3, above, please consider this response from Mr. Saltzer in his July 1 memorandum:

The requirement for the Secretary of the Navy and the Secretary of the Air Force to consult with the Secretary of the Interior before using the withdrawn lands for a purpose other than specified in Sec. 3031 (a)(2) of the Military Lands Withdrawal Act has been accomplished. The Bureau of Land Management has been an active participant in the ASH discussions and plans for years, even preceding the 1999 withdrawal legislation.

## B4

- B4-5 (cont'd)** It is questionable, at the least, that the construction of a high-speed limited access highway across the Goldwater Range could be considered as contributing to the military mission of the range as defined by the Military Lands Withdrawal Act of 1999, nor does the highway contribute to protection of natural and cultural resources on an area of the Goldwater Range that is presently closed to the public.
- B4-6** The Area Service Highway also does nothing to further recreation by the general public—or at least it's not supposed to. If the public is excluded or discouraged from using the highway because it is intended for trucks carrying hazardous cargo from Mexico to I-8, it will serve no recreational purpose. On the other hand, if the public is encouraged to use the road, it will only compound the encroachment on the Goldwater Range and provide access, even if illicit, for the curious.
- B4-7**
- B4-8**
- B4-9** 2. The Area Service Highway route encourages sprawl  
Routing this road through the Goldwater Range encourages development at the peripheries of land in the Yuma-San Luis area. Instead of encouraging growth outward from already developed areas, the highway encourages leapfrog development in order to take advantage of the high-speed access the highway provides. This type of development results in more expensive tax-supported services, such as law enforcement, fire, water, sewer, sanitation, and schools. Remember, development follows roads.
- B4-10** 3. The Area Service Highway doesn't benefit the people who are paying for it  
Taxpayers are footing the bill for the Area Service Highway. However, instead of providing them with a freeway to serve the transportation needs of the crowded San Luis-Gadsden-Somerton-Yuma corridor, the highway is routed far from centers of population. The road's main benefit would be for owners of border factories (maquiladoras) in the San Luis, Mexico area. Moreover, the public is being discouraged from using the road because of the amount of truck traffic that the road's proponents project for it. The Yuma Metropolitan Planning Organization claims that 1200 trucks will be using the route daily by 2015 (YMPO web page). In addition, the public is being discouraged from using the highway because some trucks will be carrying hazardous materials.
- B4-11**
- B4-12**
- B4-13**
- B4-14** However, as population grows in the Foothills area east of Yuma, the Area Service Highway will be running right through a populated area north of the Goldwater Range. It will also run through a populated area as San Luis expands to the east. This will negate the supposed advantage of locating the highway in currently less-developed areas in order to route hazardous material transport away from humans, but the road would still not benefit the majority of the population in the San Luis to Yuma corridor.
- B4-15** The amount of hazardous material carried on the Area Service Highway would also be only a fraction of the hazardous materials carried in the Yuma-San Luis area. Every day hazardous materials pass through and arrive at and depart from

## RESPONSE TO ORGANIZATION COMMENTS

### Response to Comment B40-10 (continued)

#### Response to Comment B4-5

Response is identical to the response for comment B4-4.

#### Response to Comment B4-6

The ASH would be fenced on both sides providing a physical barrier to curiosity seekers from entering the BMGR where presently none exists.

#### Response to Comment B4-7

Public recreation is not an identified goal of the ASH. ADOT's Mission, *To provide a safe and efficient transportation system, together with the means of revenue collection and licensing for Arizona* [emphasis added], identifies that providing public recreation opportunities is not a priority for ADOT projects. Furthermore, the identified core business functions of ADOT are 1) develop and operate the transportation infrastructure, 2) license and register, and 3) manage revenue. Recreation is not a primary objective or function of the agency.

The objective of removing commercial traffic and hazardous cargo from populated and congested areas (Draft EA, p. 4) could mean that recreational pursuits of the general public would be facilitated: it would be easier for the public to reach more remote and less congested areas. Whatever limitations the Preferred Alternative would have in serving recreational purposes, these limitations would be shared by any alignment meeting the project's purpose and need.

#### Response to Comment B4-8

Refer to the response to comment B4-4.

#### Response to Comment B4-9

Refer to the response to comment B4-2.

#### Response to Comment B4-10

The objectives for the highway are clearly listed in the Draft EA (p. 4), one of which is the explicit relief of existing and future congestion on US 95 through the city of Yuma.

Yuma County has three county sales taxes that are applied to certain transactions within the county limits. Each sales tax is one-half of

1 percent (0.5%). The Capital Projects Sales Tax, one of these three, was approved by voters on September 12, 2000, and became effective on January 1, 2001. The County may use revenues from this tax only for capital projects, which include highways. The ballot used in the election listed each project to be financed with the tax collected and the estimated costs of each project. The tax expires if and when the total amount of estimated costs for all of the projects has been raised.

Of the five economic development projects associated with this 2000 tax initiative, one was the ASH. Through this tax that Yuma County voters levied on themselves, \$13.15 million is to go toward funding the ASH. County voters approved this tax with full knowledge of the purpose and need for the ASH and of its likely corridor. Although a given county resident may not become a frequent user of the ASH, each resident would receive benefits from the highway meeting its intended purposes, including some general economic benefits for the county and improved access and employment opportunities that that access may stimulate.

The County's share would represent less than a third of the ASH's estimated construction cost of \$72 million; the remaining two-thirds of the cost would be covered by federal funds, i.e., not with dollars collected directly and specifically only from Yuma County. According to the Draft EA (p.12), the Preferred Alternative would "provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden." These are benefits to all County residents, visitors, and through traffic.

**Response to Comment B4-1 1**

Refer to the Final EA, II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck

**Response to Comment B4-1 1 (continued)**

traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

**Response to Comment B4-12**

The objectives for the highway are clearly listed in the Draft EA (p. 4); of the three specific objectives, two are directed toward facilitating the transport of goods across the International Border and toward removing commercial traffic from populated and congested areas. Through this redirection of commercial traffic to the ASH, the public would be freer to use existing transportation links without the congestion and conflicts with commercial transport that would otherwise be anticipated.

Construction of an alternative that avoids existing population centers would not, in itself, discourage the public from using the highway. It would provide for more effective regional transportation for all vehicles, whether commercial or private. Furthermore, ADOT would not sign the road as a commercial route.

**Response to Comment B4-13**

Hazardous materials and waste are transported along almost all state highways. There are segments of the Arizona State Highway System that do not allow the presence of trucks transporting “hazardous” cargo. These sections are identified when the design of the highway is such that special conditions exist which would exacerbate the repercussions of an accident. The design of the ASH would not create a situation warranting the exclusion of hazardous materials.

Hazardous materials spills/concerns on the ASH would be treated the same as any hazardous materials incidents on the state roadway system. Spills/issues would be contained within the ADOT right-of-way if possible, and appropriately treated/remediated. The ADOT Motor Vehicle Division has a system in place to respond to all accidents and spills involving hazardous cargo/waste along the State Highway System to ensure that remediation, where applicable, follows state and federal guidelines.

**B4**

**B4-15**  
(cont'd)

Yuma by train on the Union Pacific and by truck on I-8 and other routes. Unfortunately, there is no way to route all hazardous material transport to areas unpopulated by humans. Instead, the hazardous materials need to be neutralized where they are produced so they don't need to be transported or at least can be transported without danger to the public and the environment.

**B4-16**

Data from the Yuma Metropolitan Planning Organization website show that there is substantial vehicle traffic between San Luis, Somerton, and Yuma. Many people drive to work from both San Luis Rio Colorado, Sonora and San Luis, Arizona to jobs in Yuma, and others go to work in the other direction. There is substantial traffic from the Yuma-San Luis, Arizona area to Mexico for shopping and services, and similar traffic from Mexico to San Luis, Arizona and Yuma. There are two main routes from San Luis to Yuma—US 95, and a combination of County 23<sup>rd</sup> to Avenue B, joining US 95 at the Cocopah Casino. Using Yuma Metropolitan Planning Organization web site data, at various measuring points along US 95 from San Luis to its junction with Avenue B, the average of four twenty-four hour quarterly traffic counts from February through November 2002 was a minimum of 5392 at US 95 east of Avenue G to 10,754 at US 95 north of Piceno Road. Along County 23<sup>rd</sup> and Avenue B from San Luis to its junction with US 95, the minimum average count was 6847 at Avenue B north of County 19<sup>th</sup> Street to a maximum of 7851 at County 23<sup>rd</sup> Street west of Avenue B. The average count at US 95 south of County 14<sup>th</sup> Street was 11,121. Given this amount of traffic, and the fact that taxpayers are paying for the Area Service Highway, people in the San Luis-Yuma traffic corridor deserve a freeway, rather than the widening and straightening of US 95 that is occurring at a glacial pace, and which will not be a limited access road. Locating the route of the Area Service Highway farther to the west would provide the road that people in the San Luis-Yuma corridor deserve. The importance of locating the Area Service Highway much closer to San Luis, Gadsden, Somerton, and Yuma becomes more apparent in the next section.

**B4-17**

**4. The economic premises for building the Area Service Highway along its proposed route may be short-lived or even faulty, resulting in a road that will serve nobody**

The two main reasons given for building the Area Service Highway along its proposed route are to serve border industries (maquiladoras) and a proposed air cargo terminal at Yuma International Airport.

However, the maquiladora industry is already in decline, even before the road is built. A November 22, 2002 article by Louie Villalobos in *The Sun* ("Jobs Along Border in Danger", pp. A-1, A-6) reports that the number of factory workers in San Luis Rio Colorado has dropped from 13,000 to 8000 and that along the length of the U.S.-Mexico border, 250,000 jobs in maquiladoras have been lost. These jobs are moving to southern Mexico and China because manufacturers can take advantage of cheaper labor there.

**Response to Comment B4-14**

As population increases in the vicinity of the ASH as well as in other parts of the region, the need to transport hazardous cargo would not be eliminated; it would, in all likelihood, increase. Efforts to plan, construct, and operate a highway system that both avoids population centers and transports the byproducts of those very centers' production efforts would never be noncompeting objectives. The objectives for the highway are clearly listed in the Draft EA (p. 4), one of which is the explicit relief of existing and future congestion on US 95 through the city of Yuma. Providing this relief would "benefit the majority of the population in the San Luis to Yuma corridor."

**Response to Comment B4-15**

Comment is noted in the project record.

**Response to Comment B4-16**

Through the Yuma County Capital Projects Sales Tax, which County voters levied on themselves, \$13.15 million is to go toward funding the ASH. County voters approved this tax with full knowledge of the purpose and need for the ASH and of its likely corridor. Although a given county resident may not become a frequent user of the ASH, each resident would receive benefits from the highway meeting its intended purposes, including some general economic benefits for the county and improved access and employment opportunities that that access may stimulate.

**Response to Comment B4-17**

The objectives for the highway are clearly listed in the Draft EA (p. 4); one of the three is the explicit relief of existing and future congestion on US 95 through the city of Yuma. Selection of a corridor or an alignment for the ASH was not predicated on the existence of or the economic health of an air cargo terminal.

Refer to the Final EA, II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San

**Response to Comment B4-17 (continued)**

Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

The relative economic health of the maquiladora industry at any point in time is not directly relevant to the decision to build the ASH because the objectives for building the highway do not include such direct support for border industries nor is it relevant to the decision to build the ASH along the Preferred Alternative.

**Response to Comment B4-18**

Selection of a corridor or an alignment for the ASH was not predicated on the existence or economic health of an air cargo terminal.

Yuma County and the Yuma urban area have experienced substantial growth in the last several decades, and business development, increased tourism, and international trade would continue to contribute to economic growth in the area. Population growth is expected to increase an additional 60 percent in the county before the year 2015. An increase in commercial traffic would result from population growth in the Yuma area, enactment of North American Free Trade Agreement initiatives, industrial growth in Mexico, and a strong U.S. economy.

Refer to the Final EA, II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

**Response to Comment B4-19**

The relative economic health of the maquiladora industry at any point in time is not directly relevant to the decision to build the ASH because the objectives for building the highway do not include such direct support for border industries nor is it relevant to the decision to

**B4**

B4-18

The air cargo terminal would actually be closer to I-8 than the Area Service Highway. Avenue 3E, which is a state highway, could be upgraded to handle the truck traffic much more inexpensively than building the Area Service Highway.

In addition, the air cargo terminal concept is one that much more often fails than succeeds. According to a *Wall Street Journal* article ("Fields of Dreams: All-Freight Airports, Touted as Way to Lure Firms, Pose Big Risks, December 2, 1992, pp. A1, A7), "Cargo carriers say they need to be near big distribution markets and to have access to the cheap belly space of passenger airliners." Yuma supports only limited commuter passenger service. The article points out that even if there is already a well-developed industrial base in an area, a successful air cargo operation is the exception rather than the rule.

B4-19

With the maquiladora industry in decline, and an air cargo terminal a risky proposition in an area that has minimal air passenger service and limited industry, the Area Service Highway could easily become a white elephant if it is built along its proposed route through the Goldwater Range. However, if it were located farther to the west, in the San Luis-Yuma traffic corridor, it would still serve the needs of Yuma County residents and winter visitors regardless of the success or failure of the maquiladoras and the proposed air cargo terminal. It's the difference between a potential waste of taxpayer dollars (the Goldwater Range route) and a wise investment in the transportation needs of Yuma County's residents (a westerly route).

**5. The proposed route of the Area Service Highway will destroy prime habitat for the Flat-tailed Horned Lizard**

B4-20

The status of the Flat-tailed Horned Lizard has fluctuated since it was first proposed in 1993 for listing under the Endangered Species Act, and has still not been settled. Having been denied listing by the Fish & Wildlife Service in January 2003, environmental organizations, scientists, and scientific organizations in May 2003 sent notice to the Fish & Wildlife Service that they will seek to have the Flat-tailed Horned Lizard listed under the Endangered Species Act. Even short of listing, the lizard currently is the subject of a *Flat-tailed Horned Lizard Rangewide Management Strategy* issued in May 1997 by the Working Group of Flat-tailed Horned Lizard Interagency Coordinating Committee.

Although the rangewide management strategy establishes management areas in which actions that affect the lizard are regulated, the agreement is voluntary. The document is also contradictory in some ways. For example, a Yuma Desert Management Area was established which includes public lands west of the Goldwater Range. These public lands would be crossed by the proposed route of the Area Service Highway. Part 2.2.1 of the Planning Actions of the *Flat-tailed Horned Lizard Rangewide Management Strategy* includes provisions that every effort should be taken to limit disturbance of lizard habitat in management areas to less than ten acres. In addition, Part 2.2.1 provides that cumulative new



B4	
B4-20 (cont'd)	disturbance in each management area (such as the Yuma Desert Management Area) may not exceed one percent of the total acreage of the management area (MA). Yet, the document also conveniently provides in Planning Action 1.1 that "If the proposed Area Service Highway is constructed along a portion of the boundary of the MA, the east and south side of the right-of-way will be the new western and northern boundary of the MA, as appropriate." ( <i>Flat-tailed Horned Lizard Rangewide Management Strategy</i> , p. 35.) The Area Service Highway is given a special status which apparently overrides the rule of no more than one percent of the total acreage of the management area may be disturbed, by erasing thousands of acres of the management area from the map.
B4-21	
B4-22	In spite of a variety of attempts to census the Flat-tailed Horned Lizard population, an accurate figure has not yet been produced. Nor have the mitigation measures proposed in the rangeland management strategy been proven effective. Because of this, special care must be taken to protect the lizard's habitat. Building a freeway across what was designated a management area, notwithstanding proposed (but unproven) mitigation, is not an effective way to protect the Flat-tailed Horned Lizard, especially when there are many other reasons to locate the Area Service Highway farther to the west.
B4-23	The <i>Flat-tailed Horned Lizard Rangewide Management Strategy</i> is an attempt to avoid listing a species that is obviously in need of such protection. The <i>Rangewide Management Strategy</i> document itself warns at p. 30 that "Lack of compliance among the cooperators, a change of circumstances, or other reasons may alter the expected result of this strategy. If threats to the flat-tailed horned lizard or its habitat are not reduced, the USFWS may proceed with another proposed or emergency listing."
B4-24	Even though the Fish & Wildlife Service has signed off on the rangewide management strategy, they were not in support of the proposed route of the Area Service Highway. In a letter of November 9, 1995, the Fish & Wildlife Service envisioned the rangewide management strategy going into effect and recommended mitigation and compensation for the Area Service Highway. At the same time, the letter (Letter from Sam Spiller, Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish & Wildlife Service to Robert A. Vaughan, Executive Director, Yuma Metropolitan Planning Organization, November 9, 1995, reference: AESO/SE 2-21-95-I-479) stated  We would like to discuss the proposed route of the highway with you and your staff. As proposed, the highway would traverse high quality, relatively undisturbed flat-tailed horned lizard habitat in the vicinity of the intersection of Avenue 4E and County 23 <sup>rd</sup> . An alternative route to the north and west that adjoined agricultural development would be much less intrusive and damaging to the Yuma Desert Management Area. The route would also be shorter, presumably reducing construction costs. The sharp turn at the intersection of Avenue 4E and County 23 <sup>rd</sup> would also be eliminated,

### Response to Comment B4-19 (continued)

build the ASH along the Preferred Alternative. Selection of a corridor or an alignment for the ASH was not predicated on the existence of or the economic health of an air cargo terminal.

Through the Yuma County Capital Projects Sales Tax, which County voters levied on themselves, \$13.15 million is to go toward funding the ASH. County voters approved this tax with full knowledge of the purpose and need for the ASH and of its likely corridor. The County's share would represent less than a third of the ASH's estimated construction cost of \$72 million; the remaining cost would be covered by federal funds, i.e., not with dollars collected directly and specifically only from Yuma County.

Refer to the Final EA, I. Project Purpose and need, for a detailed discussion on the need for the ASH. Section II. Alternatives Considered provides a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

### Response to Comment B4-20

ADOT and FHWA have closely followed the status of the flat-tailed horned lizard (FTHL) throughout all phases of the project to date, and would continue to do so. Three separate Biological Evaluations have been prepared for the project's potential impacts to the FTHL. On November 7, 2002, FHWA included the FTHL in a request for formal consultation pursuant to Section 7 of the Endangered Species Act (ESA) with the US Fish and Wildlife Service (FWS) on the project's potential impacts to listed and proposed species. In a letter dated January 27, 2003, FWS informed FHWA that the proposed rule to list the FTHL as threatened had been withdrawn and Section 7 conference for the FTHL would not be completed.

## B4

B4-24  
(cont'd)

presumably reducing safety hazards. Much of the land on this alternative route is owned by the State Land Department, but these lands could be acquired through purchase, or by friendly condemnation or a third-party land exchange whereby the lands would become Bureau of Land Management lands that could then be used for the highway pursuant to a right-of-way agreement. We believe that such an arrangement would benefit the flat-tailed horned lizard and make for a better highway proposal.

### Conclusion

For all the above reasons, the Yuma Audubon Society recommends that the proposed route of the Area Service Highway be rejected and that a different route much farther to the west be utilized, close to the population centers of San Luis, Gadsden, Somerton, and Yuma. This will provide maximum benefits to the people of Yuma County and minimal effects on the natural environment, including the Flat-tailed Horned Lizard.

For further information contact Cary Meister, Yuma Audubon Conservation Chair, at the address above.

### Response to Comment B4-20 (continued)

Because of the January 3, 2003, withdrawal of the proposed rule, the FTHL does not currently receive protection under ESA. In the withdrawal of the proposed rule, FWS determined that listing the FTHL was not warranted because "threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range." FWS considered the ASH in its decision to withdraw the proposed rule, stating that the impact of the ASH "does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act." Should the FTHL become listed under ESA before the project is completed, FHWA would reinitiate Section 7 consultation with FWS.

ADOT and FHWA are aware of the 1997 FTHL RMS, as well as its 2003 revision. Although the Conservation Agreement and accompanying RMS are voluntary, ADOT and FHWA have worked closely with signatories of the FTHL Conservation Agreement during all phases of the project. An FTHL mitigation plan for the ASH has been drafted and is currently under review by the FTHL Interagency Coordinating Committee (ICC). The mitigation plan is based on the Planning Actions identified in the RMS, other input from signatory agencies and ICC members, and recommendations made by FWS representatives during an October 31, 2002, meeting. The plan includes such measures as barrier fencing, biological monitoring, and compensation for suitable FTHL habitat that would be impacted by the project. The mitigation plan goes above and beyond the requirements outlined in the 1997 (and revised 2003) RMS, and FHWA and ADOT would continue working with signatories of the Conservation Agreement to reduce potential impacts to the FTHL throughout all phases of the ASH project.

Even if the ASH were not excluded from the Yuma Desert MA, the ASH would still comply with the RMS. Planning Action 2.2.1 in the 2003 revision of the RMS states that "... New ROWs [rights-of-way] may be permitted only along the boundaries of MAs and only if impacts can be mitigated to avoid long-term effects on FTHLs *in the*

**Response to Comment B4-20 (continued)**

MA [emphasis added].” The ASH ROW would be located along the boundary of the Yuma Desert MA, and the impacts from the ASH would be mitigated to avoid long-term effects of FTHLs in the MA. Planning Action 2.2.1 also states that “Disturbance shall be limited to 10 acres or less per authorization, *if possible* [emphasis added]. If individual disturbances over 10 acres are necessary, the ICC and the MOG shall be contacted to provide suggestions for minimizing potential impacts to FTHLs.” The ASH would result in more than 10 acres of disturbance; accordingly, ADOT and FHWA have worked closely with signatories of the FTHL Conservation Agreement during all phases of the project. Finally, Planning Action 2.2.1 states that “The cumulative new disturbance per MA since 1997 may not exceed 1% of the total acreage on federal land.” The Yuma Desert MA is approximately 131,000 acres in size, and revising the boundaries of the Yuma Desert MA to accommodate the ASH would reduce the MA by approximately 1,000 acres. Therefore, the ASH would reduce the MA by approximately 0.76 percent. According to the Summary of Management Strategy Implementation section of the 2003 RMS, 0.002 percent of the Yuma Desert MA has been authorized for disturbance since 1997. Therefore, the ASH would not exceed the 1 percent cumulative disturbance threshold outlined in the RMS. In the withdrawal of the proposed rule to list the FTHL as threatened, FWS stated that “Because the Area Service Highway would only contract the MA boundary on one side by less than 1 percent, leaving the habitat in the MA contiguous, this impact does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act.”

**Response to Comment B4-21**

The ASH was given “special status” because the planning process for the ASH began in the mid to late 1980s, well before the 1997 FTHL RMS was adopted. However, even if the ASH were not excluded from the Yuma Desert MA, the ASH would still comply with the 1997 RMS (and its 2003 revision). For additional discussion, see the response to comment B4-20.

#### **Response to Comment B4-22**

ADOT and FHWA rely on the US Fish and Wildlife Service, Arizona Game and Fish Department and FTHL Interagency Coordinating Committee to provide input into the development of FTHL mitigation measures that are based on the best available scientific data. ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop a mitigation approach that is consistent with the *FTHL Ran gewide Management Strategy, 2003 Revision*, and that would provide the most effective protection to local FTHL populations. It is understood by all parties that there is incomplete information on certain aspects of FTHL ecology and conservation needs. FTHL mitigation for the ASH includes a suite of actions and monitoring of their effectiveness. The mitigation actions include FTHL barrier fencing, fencing of right-of-ways and portions of the Yuma Desert Management Area to preclude vehicle access off of designated roads and trails, biological monitors during construction, and compensation of lost habitat. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

#### **Response to Comment B4-23**

ADOT and FHWA rely on the US Fish and Wildlife Service, Arizona Game and Fish Department and FTHL Interagency Coordinating Committee to provide input into the development of FTHL mitigation measures that are based on the best available scientific data. ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop a mitigation approach that is consistent with the *FTHL Ran gewide Management Strategy, 2003 Revision*, and that would provide the most effective protection to local FTHL populations. It is understood by all parties that there is incomplete information on certain aspects of FTHL ecology and conservation needs. FTHL mitigation for the ASH includes a suite of actions and monitoring of their effectiveness. The mitigation actions include FTHL barrier fencing, fencing of right-of-ways and portions of the Yuma Desert Management Area to preclude vehicle access off of designated roads and trails, biological monitors during construction, and compensation of lost habitat. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

**Response to Comment B4-24**

The Final EA has included additional discussion on the corridor selection process, as well as the alternatives considered. The evaluation of alternatives considered impacts to the flat-tailed horned lizard in addition to a variety of other factors. Refer to the Final EA, Section II. Alternatives Considered.

B4

YUMA AUDUBON SOCIETY  
P.O. BOX 6395  
YUMA, ARIZONA 85366-6395

December 18, 2000

Mr. John Gross  
Executive Director  
Yuma Metropolitan Planning Organization  
502 S. Orange Ave.  
Yuma, Arizona 85364

Dear Mr. Gross:

Thank you for sending us the invitation letter concerning the proposed change in the route of the Area Service Highway (ASH). Unfortunately, I was unable to attend the meeting because of work commitments, but I submit the following comments in lieu of attendance at the meeting.

- B4-25 | It is good to see that the YMPO is reconsidering the route of the ASH. YMPO should now take the next logical step and reconsider the whole route of the ASH. The current proposed route would create significant, unmitigable environmental and growth impacts. YMPO should route the ASH north along Avenue B at its intersection with County 23rd, rather than going farther east along County 23rd and turning north just inside the Goldwater Range.
- B4-26 |
- B4-27 | There are many reasons why a northward route along Avenue B to the Yuma area would be superior. First of all, such a route would best benefit the taxpayers of Yuma County who are being asked to pay for this road. Routing northward along Avenue B could get the ASH to I-8 in fewer miles, saving millions of dollars in construction costs. Even if land acquisition costs were greater, this could conceivably result in the same amount being spent. It would also avoid encroaching on the Goldwater Range, such encroachment ultimately being detrimental to the mission of the military on the range. No matter what YMPO may say, if the ASH is routed through the Goldwater Range, this will ultimately result in pressures for development along the ASH. This would also produce a leapfrog form of growth, with large areas left undeveloped between Yuma and the ASH. Rather than building out from the populated core of southern Yuma county, the current proposed route of the ASH would promote growth at the periphery.
- B4-28 |
- B4-29 |
- B4-30 |

#### Response to Comment B4-25

Comment is noted in the project record.

#### Response to Comment B4-26

The suggested improvements to Avenue B would meet none of the three objectives of the ASH. Refer to the Final EA, II. Alternative Considered, for further discussion regarding an evaluation of alternatives.

#### Response to Comment B4-27

Making the suggested improvements to Avenue B would meet none of the three objectives of the ASH as stated on p. 4 of the Draft EA.

Yuma County has three county sales taxes that are applied to certain transactions within the county limits. Each sales tax is one-half of 1 percent (0.5%). The Capital Projects Sales Tax, one of these three, was approved by voters on September 12, 2000, and became effective on January 1, 2001. The County may use revenues from this tax only for capital projects, which include highways. The ballot used in the election listed each project to be financed with the tax collected and the estimated costs of each project. The tax expires if and when the total amount of estimated costs for all of the projects has been raised.

Of the five economic development projects associated with this 2000 tax initiative, one was the ASH. Through this tax that Yuma County voters levied on themselves, \$13.15 million is to go toward funding the ASH. County voters approved this tax with full knowledge of the purpose and need for the ASH and of its likely corridor. Although a given county resident may not become a frequent user of the ASH, each resident would receive benefits from the highway meeting its intended purposes, including some general economic benefits for the county and improved access and employment opportunities that that access may stimulate.

The County's share would represent less than a third of the ASH's estimated construction cost of \$72 million; the remaining two-thirds of the cost would be covered by federal funds, i.e., not with dollars collected directly and specifically only from Yuma County.

**Response to Comment B4-27 (continued)**

According to the Draft EA (p.12), the Preferred Alternative would “provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden.” These are all benefits to the population the commenter noted.

**Response to Comment B4-28**

Refer to the response to comment B4-2.

**Response to Comment B4-29**

Refer to the response to comment B4-2.

**Response to Comment B4-30**

Yuma County and the Yuma urban area have experienced substantial growth in the last several decades, and business development, increased tourism, and international trade would continue to contribute to economic growth in the area. Population growth is expected to increase an additional 60 percent in the county before the year 2015. An increase in commercial traffic would result from population growth in the Yuma area, enactment of North American Free Trade Agreement initiatives, industrial growth in Mexico, and a strong U.S. economy.

Refer to the Final EA, II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

**B4**

- B4-31** The San Luis area is growing rapidly, not just because of manufacturing plants in Mexico, but also because of jobs the people from San Luis commute to in the Yuma area. Providing a high-speed, limited access road along Avenue B would not only make the commute easier for people from San Luis, but also would save lives. Even with recent improvements, US 95 is still a dangerous undivided highway with many curves. Because of this, more and more people driving north from San Luis have been taking County 23rd to Avenue B, causing more congestion on Avenue B and thus making driving on that undivided road more dangerous. Providing a divided, limited access highway along Avenue B would benefit many more of the people of both San Luis, Arizona and San Luis Rio Colorado, Sonora. Such a highway would also benefit residents of Yuma who travel south to San Luis for shopping or recreation. One must question why the taxpayers of Yuma County should fund the currently proposed ASH, which benefits primarily businesses in San Luis Rio Colorado and their U.S. or foreign parents or subsidiaries. The residents of Somerton would also benefit from construction of a high-speed, limited access highway along Avenue B, whether or not a limited access extension were built to Somerton, and the Cocopah would also benefit.
- B4-32**
- B4-33**
- B4-34**
- B4-35** There are other reasons for routing the ASH northward along Avenue B. For example, routing northward along Avenue B would reduce environmental damage and result in more limited impacts to the Flat-Tailed Horned Lizard, which is a particularly sensitive species and will only avoid being listed by the Fish and Wildlife Service if measures are taken to insure its survival.
- B4-36** For all these reasons, the Yuma Audubon Society asks YMPO to reroute the ASH northward along Avenue B to some point in the vicinity of Yuma and then eastward and/or northward to I-8. If Yuma is to have a taxpayer-funded freeway, it may as well benefit all of its residents and not just a limited commercial sector.
- B4-37**
- B4-38** Please also let us know what environmental compliance has been completed for this project and what environmental compliance activities are currently underway, as well as which others need to be completed before this project can proceed. For example, we are unaware of any environmental impact statement that has been produced for this project. What is its status?

Sincerely,

Cary W. Meister  
Conservation Chair

**Response to Comment B4-31**

Three objectives for the highway are outlined in Section I. B. Project Need; one of which is the explicit relief of existing and future congestion on US 95 through the city of Yuma. The suggested route would increase congestion in the Yuma area and would not remove commercial and hazardous cargo from populated and congested areas.

**Response to Comment B4-32**

Making the suggested improvements to Avenue B would meet none of the three objectives of the ASH as outlined in Final EA, Section I. B. Project Need.

The Final EA has included additional discussion on the corridor selection process, as well as the alternatives considered.

**Response to Comment B4-33**

Refer to the response to comment B4-1 0.

**Response to Comment B4-34**

Refer to the response to comment B4-32.

**Response to Comment B4-35**

Making the suggested improvements to Avenue B would meet none of the three objectives of the ASH, as stated on p. 4 of the Draft EA. The Final EA has included additional discussion on the corridor selection process, as well as the alternatives considered. The evaluation of alternatives considered impacts to the FTHL in addition to a variety of other factors. Refer to the Final EA, Section II. Alternatives Considered.

In the January 3, 2003, withdrawal of the proposed rule, FWS determined that listing the FTHL was not warranted because "threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range." FWS considered the ASH in their decision to withdraw the proposed rule, stating that the ASH "does not constitute a significant threat to the species or its habitat such that the species



**Response to Comment B4-35 (continued)**

warrants listing under the Act.” ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop a mitigation plan that would provide the most effective protection to local FTHL populations (refer to the Final EA, Appendix D).

**Response to Comment B4-36**

Making the suggested improvements to Avenue B would meet none of the three objectives of the ASH as stated on p. 4 of the Draft EA.

**Response to Comment B4-37**

Refer to the response to comment B4-10.

**Response to Comment B4-38**

A final environmental assessment has been completed for the proposed action including separate technical documentation of potential impacts on noise, air, cultural resources, hazardous materials, and biological resources.

B4



YUMA AUDUBON SOCIETY  
P.O. BOX 6395  
YUMA, ARIZONA 85366-6395

June 23, 2003

Diane Simpson-Colebank  
Logan Simpson Design Inc.  
51 West Third Street, Suite 450  
Tempe, Arizona 85281

Dear Ms. Simpson-Colebank:

The Yuma Audubon Society submits the following comments on the *Yuma Area Service Highway Draft Environmental Assessment*.

**The Project Requires an Environmental Impact Statement**

While we understand that an environmental assessment (EA) can be done in order to determine whether to prepare an environmental impact statement (EIS) (40 CFR 1508.9), as the lead agency, the Federal Highway Administration's regulations (23 CFR Part 771) implementing the National Environmental Policy Act of 1999, as amended (NEPA, 42 U.S.C. 4321-4347) make it clear that an environmental impact statement is needed for a project of this nature. The relevant passage is 23 CFR 771.115(a)(1-2) which states that:

- Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally require an EIS:
- (1) A new controlled access freeway.
  - (2) A highway project of four or more lanes on a new location.

The proposed Area Service Highway clearly meets the criteria of a "new controlled access freeway" and a "highway project of four or more lanes on a new location" and thus, normally, and by definition, an EIS is the correct class of action, not an environmental assessment. Projects which meet the above two criteria are by definition "Actions that significantly affect the environment" unless the circumstances are other than normal. Nowhere in the EA is there an explanation of why the proposed action should be considered an exception to the normal.

**Response to Comment B4-39**

NEPA and related supporting regulations require that an environmental impact statement (EIS) be prepared and approved when a proposed Federal action (e.g., the authorization for the use of Federal-aid Highway Program funds to construct a highway improvement) would cause *significant* impacts. The completed studies, evaluations, and public outreach conducted by ADOT have not identified impacts resulting from the proposed improvements that are clearly *significant*. While there are virtually no improvements without some adverse effects, the efforts ADOT has undertaken to identify possible adverse effects have afforded substantial public input and involvement, considered a reasonable range of alternatives, evaluated the impacts in terms of context and intensity, and provided reasonable plans to mitigate and minimize any adverse impacts. At this time, the FHWA does not believe there is a legitimate basis for requesting ADOT to prepare an EIS.

B4-39

**B4**

- |                          |  |
|--------------------------|--|
| <b>B4-39</b><br>(cont'd) | However, even if one argues that this is not a "normal" project, it still is an action that significantly affects the environment, and thus requires preparation of an EIS. The criteria for significance are addressed at 40 CFR 1508.27. They include both context and intensity. Intensity includes ten criteria, of which at least nine are relevant to the proposed Area Service Highway.   |
| <b>B4-40</b>             | The first criterion (40 CFR 1508.27(b)(1)) is an admonition that even if a Federal agency believes the overall impacts of a project are beneficial, the impacts may still be significant. Thus, even though the proponents of the Area Service Highway argue that the project will be beneficial, this does not automatically mean that the impacts are not significant.   |
| <b>B4-41</b>             | The second criterion (40 CFR 1508.27(b)(2)) states that significance must be judged in terms of the extent to which a proposed action affects public health or safety. The EA argues that the proposed project will remove "commercial traffic and hazardous cargo from populated and congested areas" and that it will relieve "existing and anticipated congestion on US 95 through the city of Yuma" (EA, p. 4). We also heard a presentation at the public hearing on the EA on June 12 that the proposed project is intended to resolve a dangerous mix of traffic types on US 95 between Yuma and San Luis. We presume that the project's proponents would not argue that such objectives are insignificant, since they appear to be a large part of the justification for the proposed route.   |
| <b>B4-42</b>             | The third criterion (40 CFR 1508.27(b)(3)) concerns "unique characteristics of the area" and includes, <i>inter alia</i> , "historic or cultural resources," "prime farmlands," and "ecologically critical areas." The proposed route was purportedly selected in order to avoid prime farmland, and the Flat-tailed Horned Lizard, which is the subject of a Rangewide Management Strategy, including designated management areas and mitigation requirements, surely occupies an ecologically critical area (Flat-Tailed Horned Lizard Working Group of Interagency Coordinating Committee, Larry D. Foreman, ed., <i>Flat-tailed Horned Lizard Rangewide Management Strategy</i> , Riverside, CA: U.S. Bureau of Land Management, May 1997.)  |
| <b>B4-43</b>             | The fourth criterion for significance (40 CFR 1508.27(b)(4)) relates to the extent to which the project is highly controversial. There were approximately fifty members of the public in attendance at the hearing on the EA in Yuma on June 12. Many of them either asked questions or made public statements on the project. Virtually all of the questions and comments were either critical or condemnatory of the project (the transcript of the meeting will demonstrate this). In addition, newspaper articles reporting controversy over the project have appeared in <i>The Sun</i> of Yuma, Arizona ("Lawsuit Threatens Proposed Highway," June 12, 2003, pp. A-1, A-6 and "ASH Drives Public to Respond at ADOT Hearing," June 13, 2003, p. B-1) and <i>The Arizona Republic</i> ("Yuma Highway Plan Stirs Habitat Debate," June 20, 2003, pp. B1, B2). |

**Response to Comment B4-40**

Refer to the response to comment B4-39.

**Response to Comment B4- 41**

The objective of removing commercial traffic and hazardous cargo from populated and congested areas (Draft EA, p. 4) could mean that recreational pursuits of the general public would be facilitated: it would be easier for the public to reach more remote and less congested areas. Whatever limitations the Preferred Alternative would have in serving recreational purposes, these limitations would be shared by any alignment meeting the project's purpose and need.

Construction of the ASH and commercial port of entry would encourage trucks to use SR 195 instead of US 95 to access I-8. This should provide a reduction in truck traffic on US 95 thereby reducing vehicular conflicts with farm equipment and farm labor buses. In addition, refer to response to comment B4-7 for additional discussion.

**Response to Comment B4-42**

The Final EA has included additional discussion on the corridor selection process, as well as the alternatives considered. The evaluation of alternatives considered impacts to the FTHL in addition to a variety of other factors. Refer to the Final EA, Section II. Alternatives Considered.

**Response to Comment B4-43**

The negative statements of approximately 50 participants at a single public meeting and the subsequent appearance of articles in newspapers do not, ipso facto, make a project "highly controversial." Additional comments received since the public hearing supported the construction of the ASH in its proposed location (refer to Appendix A Agency Coordination Letters and Agreements and Appendix D Environmental Mitigation Measures for the Yuma Area Service Highway).

# **Response to Comment B4-44**

Transporters of hazardous substances must comply with all applicable international, federal, state, and local regulations. Federal hazardous materials transportation law (49 USC § 5101 et seq., [formerly the Hazardous Materials Transportation Act]) is the basic statute regulating hazardous materials transportation in the U.S. The purpose of this law is to provide adequate protection against risks to life and property inherent in transporting hazardous materials in commerce. Hazardous materials regulations (49 CFR Parts 171– 180) apply to interstate, intrastate, and foreign commerce.

Additionally, the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), which is managed by agreement with the Environmental Protection Agency (EPA) in Arizona by the Arizona Department of Environmental Quality, regulates numerous aspects of the lifecycle of hazardous waste. Arizona has adopted most of the federal regulation in the Arizona Administrative Code Chapter 8, Article 2, Hazardous Waste. RCRA provides for a system to identify and track hazardous waste from generator, to transporter, to treatment and storage/disposal, and requires transporters to notify EPA of hazardous waste activity.

As population increases in the vicinity of the ASH as well as in other parts of the region, the need to transport hazardous cargo would not be eliminated; it would, in all likelihood, increase. Efforts to plan, construct, and operate a highway system that both avoids population centers and transports the byproducts of those very centers' production efforts would never be noncompeting objectives. The objectives for the highway are clearly listed in the Draft EA (p. 4), one of which is the explicit relief of existing and future congestion on US 95 through the city of Yuma. Providing this relief would "benefit the majority of the population in the San Luis to Yuma corridor."

Hazardous materials and waste are transported along almost all state highways. There are segments of the Arizona State Highway System that do not allow the presence of trucks transporting "hazardous" cargo due to special conditions which would exacerbate the repercussions of an accident. The design of the ASH would not create a situation warranting the exclusion of hazardous materials.

## **B4**

**B4-44**

A fifth criterion of significance (40 CFR 1508.27(b)(5)) concerns "uncertain" effects or "unique or unknown risks." Since the EA does not discuss potential impacts from hauling hazardous materials on the Area Service Highway, there are uncertain effects and unique or unknown risks. Since the mitigation techniques proposed for the Flat-tailed Horned Lizard are untested and unproven, there are uncertain effects and unique or unknown risks.

**B4-45**

Sixth in the list of criteria (40 CFR 1508.27(b)(6)) is whether an action will create a precedent for future actions of a significant nature. The Area Service Highway would establish a de facto utility corridor across the Barry M. Goldwater Range. At a recent scoping meeting in Yuma on the Wellton-Mohawk electric power plant, I heard from its proponents that a new natural gas pipeline will be built to supply the power plant and that the pipeline would very likely be extended to the San Luis, Sonora area to provide a natural gas source for industry and a proposed power plant in San Luis, Mexico. If the Area Service Highway is routed through the Goldwater Range, it very likely would establish a precedent for future utility rights-of-way to Mexico.

**B4-46**

Seventh on the list (40 CFR 1508.27(b)(7)) is the effect of cumulative impacts. The EA includes a list of cumulative impacts on pp. 49-53, and they are substantial. Looking at the Flat-tailed Horned Lizard alone, a state prison has already been built in its habitat. There are other potential projects in its habitat, including a landfill for the City of Yuma, sludge disposal areas if the Bureau of Reclamation desalinization plant is reactivated, the new port of entry where the Area Service Highway will begin, a wastewater treatment plant, and others. There clearly are significant cumulative impacts in the area encompassed by the EA and from the issues it raises (such as Flat-tailed Horned Lizard habitat).

**B4-47**

The eighth criterion of significance (40 CFR 1508.27(b)(8)) concerns the degree of adverse effects of an action on Natural Register of Historic Places listed or eligible sites and loss or destruction of scientific, cultural, and historic resources. There are Natural Register eligible sites which will be affected by this proposed action, and the project would also cause the loss of prime Flat-tailed Horned Lizard habitat within a special management area set up for the benefit of the lizard. The highway would also significantly fragment Flat-tailed Horned Lizard habitat. These are highly significant effects and there is no guarantee that mitigation methods will work for the Flat-tailed Horned Lizard.

**B4-48**

Criterion number nine (40 CFR 1508.27(b)(9)) concerns the degree to which an action may cause adverse effects on species listed under the Endangered Species Act. The Flat-tailed Horned Lizard is a threatened species in all but name through listing. If there were no Rangeland Management Strategy for the Flat-tailed Horned Lizard, it would be listed, and the Rangeland Management Strategy provides that the Fish & Wildlife Service may initiate listing, including emergency listing. The fact that the Fish & Wildlife Service did not list the species does not mean that all is well for the Flat-tailed Horned Lizard. It stands on the verge of listing for at least two reasons—the Rangeland Management Strategy, and a notice issued to the Fish &

**Response to Comment B4-44 (continued)**

Hazardous materials spills/concerns on the ASH would be treated the same as any hazardous materials incidents on the state roadway system. Spills/issues would be contained within the ADOT right-of-way if possible, and appropriately treated/ remediated. The ADOT Motor Vehicle Division has a system in place to respond to all accidents and spills involving hazardous cargo/waste along the State Highway System to ensure that remediation, where applicable, follows state and federal guidelines.

ADOT and FHWA rely on the US Fish and Wildlife Service, Arizona Game and Fish Department and FTHL Interagency Coordinating Committee to provide input into the development of FTHL mitigation measures that are based on the best available scientific data. ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop a mitigation approach that is consistent with the *FTHL Range-wide Management Strategy, 2003 Revision*, and that would provide the most effective protection to local FTHL populations. It is understood by all parties that there is incomplete information on certain aspects of FTHL ecology and conservation needs. FTHL mitigation for the ASH includes a suite of actions and monitoring of their effectiveness. The mitigation actions include FTHL barrier fencing, fencing of right-of-ways and portions of the Yuma Desert Management Area to preclude vehicle access off of designated roads and trails, biological monitors during construction, and compensation of lost habitat. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

**Response to Comment B4-45**

Construction and operation of a highway through a portion of the Barry M. Goldwater Range does not create any precedent for utilities of any type to use that same corridor and does not increase any likelihood for utilities to extend into Mexico.

**Response to Comment B4-46**

Additional discussion has been included within the Final EA. Refer to the Final EA, Section IV. Affected Environment, Environmental Consequences, and Mitigation Measures.

### Response to Comment B4-47

Disturbance to cultural resources would be mitigated according to the Programmatic Agreement signed by the affected agencies and tribal entities.

According to the FWS's 1993 proposed rule to list the FTHL as threatened, an estimated 1,244,000 acres of suitable FTHL habitat remains in the U.S., and estimated FTHL densities range from 0.12 to 1.54 lizards/acre of suitable habitat. Using these estimates and the estimate of 623 acres of direct loss of FTHL habitat within the project limits, less than 0.001 percent of total remaining FTHL habitat in the U.S. would be lost, and less than 0.002 percent impacted when indirect effects are taken into account. Furthermore, FWS considered the ASH in their decision to withdraw the proposed rule, stating that the ASH "does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act."

### Response to Comment B4-48

The FTHL is currently not a species listed under the Endangered Species Act. In the January 3, 2003, withdrawal of the proposed rule, FWS determined that listing the FTHL was not warranted because threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range. FWS considered the ASH in their decision to withdraw the proposed rule, stating that the ASH "does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act." See Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA for an expanded discussion.

It is currently unknown if Peirson's milk-vetch occurs within the project area. Typical habitat for Peirson's milk-vetch consists of unstable sand dune formations below 1,000 feet in elevation. The species is currently known to occur only within the Algodones Dunes in California and the Gran Desierto Dunes in Sonora, Mexico. However, according to FWS, a single specimen was recorded in Arizona from a partially stabilized low dune system near the ASH alignment. Because

B4	
B4-48 (cont'd)	Wildlife Service that several organizations will seek through court action to have the Flat-tailed Horned Lizard listed if the Fish & Wildlife Service fails to do so. In addition, there is an endangered species within the project area, namely the Peirson's Milkvetch. The milkvetch has a very limited range, so anywhere that it occurs is significant.
B4-49	For all of the above reasons, we contend that the Area Service Highway should be the subject of a full environmental impact statement and that this is what the Federal Highway Administration should do. The EIS should contain a range of fully-analyzed alternatives, not just a proposed alternative and the required No Action alternative. One of the alternatives should be a route that is further to the west of the proposed action, for example, turning north on Avenue B at County 23 <sup>rd</sup> , rather than going to the east to the Goldwater Range. A desire for this alternative was mentioned a number of times at the public hearing in Yuma on the Area Service Highway EA. In addition, BLM, in their letter reproduced on p. B-2 of the EA calls for a "full array" of alternative routes to be analyzed. The U.S. Fish & Wildlife Service, in their letter reproduced on p. B-8 of the EA, indicates a preference for a different route for the Area Service Highway, to the north and west of the proposed route.
B4-50	
B4-51	For the same reasons, it would be inappropriate to issue a Finding of No Significant Impact (FONSI) because the Area Service Highway clearly involves significant impacts.
The Environmental Assessment Is Incomplete and Insufficiently Analytical	
B4-52	Some issues, such as encroachment on military bases by development, are completely left out. In other cases, such as describing the wildlife in the area, there are significant omissions. While the EA has a substantial descriptive component, analysis of impacts to the environment is insufficient. More detailed examples follow.
Vegetation and Wildlife Issues	
Flat-tailed Horned Lizard	
Description and Analysis	
B4-53	The information on the Flat-tailed Horned Lizard is incomplete and inadequate in providing a basis for assessment of impacts by the project on the lizard and its habitat. There is no information on population size, the difficulty of determining population size, or the effects of other projects on the population (the proposed port of entry, state prison, wastewater treatment plant, proposed City of Yuma landfill, proposed dumping areas for sludge from the desalinization plant). Impacts to the population as a whole, beyond the Yuma-San Luis area, in California and Mexico, are unmentioned. Very little information from the biological evaluations for the Area Service Highway has been included in this EA. In addition, some impacts mentioned
B4-54	

**Response to Comment B4-48 (continued)**

this habitat has not recently been surveyed for Peirson's milk-vetch, the habitat was assumed to be occupied. However, the FWS has removed Pierson's milk-vetch from the threatened and endangered species list for Yuma County because specimens from Arizona that were previously described as *Astragalus magdalenae* var. *piersonii* were determined not to be the *piersonii* variety. Surveys would be conducted when conditions are favorable for Peirson's milk-vetch emergence, as stated in the mitigation measures.

**Response to Comment B4-49**

Comment is noted in the project record.

**Response to Comment B4-50**

Comment is noted in the project record.

**Response to Comment B4-51**

Refer to the response to comment B4-39.

**Response to Comment B4-52**

Refer to the response for comment B4-2.

The Final EA has additional discussion on the corridor selection process, as well as the alternatives considered. The evaluation of alternatives considered impacts to the FTHL in addition to a variety of other factors. Refer to the Final EA, II. Alternatives Considered.

**Response to Comment B4-53**

Biological Evaluations are technical documents that provide detailed discussions of the impacts that may occur to threatened, endangered, and sensitive species as a result of a project. These technical documents are used by FWS during its analysis of the project to determine possible impacts. The information contained in the Final EA regarding the FTHL has been expanded to include a more detailed discussion from the three separate Biological Evaluations that have been prepared for the project. See Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

**Response to Comment B4-54**

Refer to the response to comment B4-53.

**Response to Comment B4-55**

The situation referenced in California and the Coachella Valley fringe-toed lizard is not fully analogous to FTHL habitat. The fringe-toed lizards occupy active sand dunes; FTHL habitat is sandy flats and partially stabilized situations. Primary wind direction is southeast — northwest. The location of the ASH along the edge of the FTHL management area is expected to have little impact on sand distribution.

**Response to Comment B4-56**

Refer to the response to comment B4-20.

**Response to Comment B4-57**

Refer to the response to comment B4-20.

The ASH would impact the FTHL. The application of an effective mitigation plan is critical to offset the impacts to the FTHL such that the net effect is neutral or benefits the FTHL.

**B4**

**B4-54**  
(cont'd)

in one of the biological evaluations have been ignored by the EA. In *Biological Assessment, Yuma Area Service Highway, Yuma County, Arizona* (Tucson: Southwestern Field Biologists, 29 September 1995), Russell B. Duncan and Frank W. Reichenbacher mention five cumulative effects "as a result of the combined direct and indirect effects of the ASH and other similar roadways with effects of state or private projects that are newly completed, underway, or are likely to occur in the region in the foreseeable future" (p. 14). These include roadway construction and maintenance, development outside of Yuma and San Luis resulting from construction of the Area Service Highway, agricultural use of undeveloped state lands that contain Flat-tailed Horned Lizards, sand and gravel operations, and possible military expansion. These impacts, which are part of a biological evaluation for the Area Service Highway, and which was funded by its proponents, are completely ignored in the Area Service Highway environmental assessment.

**B4-55**

Duncan and Reichenbacher (*ibid.*) mention other impacts resulting from the proposed Area Service Highway route that are ignored by the EA. The highway may prevent the movement of sand, and as an example they mention the effects of the "A" Canal, where natural sand flow has been blocked by the structure of the canal. In the Coachella Valley, obstruction of sand flow has resulted in the decline of the Coachella Valley Fringe-toed Lizard (*Uma inornata*) population. This finding is based on a study by F. B. Turner, D. C. Weaver, and J. C. Rorabaugh (*Effects of Reduction in Windblown Sand on the Abundance of the Fringe-toed Lizard (Uma inornata) in the Coachella Valley, California*, Copeia 1984:370-378). Duncan and Reichenbacher suggest that the Flat-tailed Horned Lizard could experience a similar effect in the project area, but this potential impact is not analyzed in the EA.

**B4-56**

Duncan and Reichenbacher (*ibid.*, p. 13) also note that a large proportion of Flat-tailed Horned Lizard specimens in the University of Arizona Herpetological collection are road kill. While various factors could be responsible for this (e.g., collectors would rather drive roads looking for specimens rather than walk), Duncan and Reichenbacher state that this phenomenon is "Clear evidence that roads affect individual FTHL in the Yuma area . . ."). When an cumulative number of "individual" Flat-tailed Horned Lizards are affected, the effect is no longer individual but collective and significant.

**B4-57**

We disagree with the EA's conclusion on page 53 that the project would have a "minor negative cumulative impact" on the Flat-tailed Horned Lizard. Just before this conclusion the EA states that "Cumulative impacts to the FTHL from the ASH have been identified in the BE [biological evaluation] as a local threat to the FTHL population, but are not likely to jeopardize the continued existence of the FTHL . . ."). If the action will threaten the population, this is hardly a "minor" impact. It is a significant impact. If an action were to jeopardize the continued existence of the species, it would be an unacceptable impact. The EA unjustly minimizes the significance of the project on the Flat-tailed Horned Lizard.



B4	
	Mitigation
B4-58	Is there any evidence that the mitigation measures to keep Flat-tailed Horned Lizards off the highway will work (EA, pp. vii-xvii, E1-E6)? Have these techniques been tested elsewhere? With what results? Who will maintain the barrier fencing, culvert crossings, and fenced "runs" across the highway median? How often will maintenance occur? What guarantee is there that these mitigation measures will be maintained? Where will the funding come from? How much will it cost to implement the mitigation measures for the Flat-tailed Horned Lizard?
B4-59	We seriously doubt that corrugated metal pipes every mile or half-mile will serve as an effective way to get Flat-tailed Horned Lizards to cross to the other side of the road. How do you know they are willing to travel this far to a culvert? How do you know they will accept the corrugated metal surface of the culvert? How do you know that they are willing to cross a two hundred foot right of way within a restricted area?
B4-60	The EA also fails to assess the impact of wind-blown sand and soil building up against the mesh barriers on the right-of-way fence. As sand or soil builds up against the fence, Flat-tailed Horned Lizards could climb over the mesh barrier and get on the highway.
B4-61	Will access gates along the highway be locked and have security alarms installed? Will they shut automatically? Otherwise, gates could be opened by unauthorized persons or be left open by authorized persons and Flat-tailed Horned Lizards will get on the highway.
B4-62	Where is the land that would be acquired to compensate for the 565 acres of Flat-tailed Horned Lizard habitat lost to the highway?
B4-63	How many monitors will be hired during construction of the highway? The biological monitors should be approved by the U.S. Fish & Wildlife Service and Arizona Game & Fish Department, not just the Arizona Department of Transportation. Will spoken instruction of workers be available in languages other than English (for example, Spanish) if needed? Will a qualified interpreter be used in order to insure accuracy in translation?
B4-64	The biological monitor should be called in if <i>any</i> horned lizard is found in the construction area. The biological monitor should make the determination whether the horned lizard is a Flat-tailed Horned Lizard, not the construction crew. It is possible that the Desert Horned Lizard ( <i>Phrynosoma platyrhinos</i> ) could be found in the area.
B4-65	Why will the Bureau of Reclamation be responsible for placing and maintaining signs identifying the Flat-tailed Horned Lizard Management Area on the Barry M. Goldwater Range rather than the Marine Corps?

#### Response to Comment B4-58

ADOT and FHWA rely on the US Fish and Wildlife Service, Arizona Game and Fish Department and FTHL Interagency Coordinating Committee to provide input into the development of FTHL mitigation measures that are based on the best available scientific data. ADOT and FHWA have worked closely with the signatories of the FTHL Conservation Agreement to develop a mitigation approach that is consistent with the *FTHL Ran gewide Management Strategy, 2003 Revision*, and that would provide the most effective protection to local FTHL populations. It is understood by all parties that there is incomplete information on certain aspects of FTHL ecology and conservation needs. FTHL mitigation for the ASH includes a suite of actions and monitoring of their effectiveness. The mitigation actions include FTHL barrier fencing, fencing of right-of-ways and portions of the Yuma Desert Management Area to preclude vehicle access off of designated roads and trails, biological monitors during construction, and compensation of lost habitat. For a complete discussion, see Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA.

#### Response to Comment B4-59

Refer to the response for comment B4-58.

#### Response to Comment B4-60

Wind-blown sand and soil build-up against the mesh barriers would be controlled through periodic maintenance. Maintenance responsibilities are included in the Final EA.

#### Response to Comment B4-61

Access gates would be locked when not in use.

#### Response to Comment B4-62

As provided for in the *2003 FTHL Ran gewide Management Strategy*, compensation is provided for all land lost to the FTHL on cooperating agencies' lands. The mitigation and compensation actions provided in the Final EA (see Section IV. K. Threatened, Endangered, and Sensitive Species) include the acquisition of FTHL habitat in priority areas identified by the FTHL Management Oversight Group.

**Response to Comment B4-63**

The number of biological monitors required during construction is not known at this time. Mitigation measures in the Final EA (Pages xviii, xxii, and xxvii) require that "Only persons working under a valid Arizona Game and Fish Department Scientific Collecting Permit are allowed to handle and relocate flat-tailed horned lizards." FWS approval of monitors is not necessary because the FTHL is currently not protected by the Endangered Species Act. A qualified interpreter would be provided, if necessary.

**Response to Comment B4-64**

Mitigation measures in the Final EA (Section K) require biological monitors to develop and implement a worker education program that would include, among other items, a list of biological monitor contacts to be notified if workers encounter a FTHL in the field. Workers would not be expected to distinguish between flat-tailed and desert horned lizards, but, rather, would be instructed to contact a biological monitor if any horned lizard is found in the area.

**Response to Comment B4-65**

The Arizona Department of Transportation would provide and place signs identifying the Flat-tailed Horned Lizard Management Area on the right-of-way fence. The Arizona Department of Transportation would coordinate with the US Bureau of Reclamation regarding the design and location of the signs. Signs would be maintained and replaced by ADOT.

B4	
Vegetation and Other Wildlife	
B4-66	The list of wildlife occurring in the area seems haphazard and is hardly exhaustive (EA, pp. 40-41). For example, Collared Peccary may occur regularly on the eastern part of the Goldwater Range, but do they occur in the project area? This hasn't been our experience. The bird list is highly selective and thus unrepresentative of the project area. Mourning Dove ( <i>Zenaida macroura</i> ) and White-winged Dove ( <i>Zenaida asiatica</i> ) are not even mentioned, yet I have observed Mourning Doves in the citrus orchard that will be impacted by the proposed route of the highway from the new port of entry to County 23 <sup>rd</sup> . There is also a concern about loss of citrus orchard habitat because it is an important nesting and roosting area for Mourning Doves and White-winged Doves. There is a further economic issue as dove hunting is a significant activity in the Yuma area. However, the EA fails to address this issue. The Colorado Desert Fringe-toed Lizard ( <i>Uma notata</i> ) occurs within the project area, yet is barely mentioned. It is much more likely to occur within the project area than the Collared Peccary. We are unfamiliar with the "zebra-tailed brush lizard" mentioned on p. 41. What is its scientific name? No attention is given to invertebrates. For that matter, Burrowing Owl is pretty well ignored, yet there is even a group in Arizona that is devoted to protecting Burrowing Owl habitat. Apparently no survey was carried out during the proper time of the year to determine if Sand Food ( <i>Pholisoma sonoreae</i> ) is present in the area; the EA (p. 41) only notes that it "may exist within the project area." My recollection from a trip a number of years ago is that Sand Food may occur in the citrus orchard along Avenue E just north of the proposed port of entry, because it utilizes the more abundant water in the citrus orchard.
B4-67	
B4-68	
B4-69	
B4-70	
B4-71	
B4-72	
B4-73	Impacts to plants protected under Arizona state law are not assessed in the EA, other than a general statement that there would be impacts and that they will be salvaged (EA, p. 44).
B4-74	The whole section on wildlife in the project area gives the impression that it was written by someone unfamiliar with the project area, preventing a realistic assessment of impacts from the proposed action by both the EA writer and its readers. While description of wildlife in the project area is deficient, analysis of the wildlife and its habitat is virtually nonexistent. This is a serious shortcoming of the environmental assessment, as wildlife is always a significant element in environmental compliance documents.
B4-75	We appreciate the EA's requirement to reseed disturbed areas with a native seed mix. However, it is not clear who will determine which species will be chosen. The biological expertise of the involved agencies (including the Marine Corps, Bureau of Reclamation, and Bureau of Land Management) should be utilized.
Encroachment on a Military Reservation	
B4-76	This issue is barely mentioned in the EA, yet is one of the highest priority issues facing communities with adjacent military bases. For months and even years, the

#### Response to Comment B4-66

Section J. Vegetation and Wildlife, of the Draft EA provided a summary of the dominant plant and animal species known to occur in the area, not a complete inventory. However, more information regarding vegetation and wildlife has been provided in the Final EA. The white-winged dove is listed in the last paragraph on page 40 of the Draft EA.

#### Response to Comment B4-67

The preferred alternative for the ASH actually avoids agricultural areas, going around Arizona State Land Department land and onto the Barry M. Goldwater Range. Where the ASH passes through existing citrus orchards, it remains on existing roadway alignments from which hunting is already precluded.

#### Response to Comment B4-68

The Final EA (Section K) has been updated to include discussion on the fringe-toed lizard.

#### Response to Comment B4-69

The common name should have read "zebra-tailed lizard" (*Callisaurus draconoides*) and has been corrected in the Final EA.

#### Response to Comment B4-70

Response is identical to the response for comment B4-66.

#### Response to Comment B4-71

Response is identical to the response for comment B4-66.

#### Response to Comment B4-72

Potential impacts to sandfood have been further discussed in the Final EA.

#### Response to Comment B4-73

Application of the Arizona Native Plant Law is discussed in Section IV. K. Threatened, Endangered, and Sensitive Species, of the Final EA.

#### Response to Comment B4-74

Response is identical to the response for comment B4-66.

**Response to Comment B4-75**

It is ADOT's practice for the landscape architect to coordinate with landowning agencies to develop a native seed mix that is based on the biome the project area is located within.

**Response to Comment B4-76**

Response is identical to the responses for comments B4-2 to B4-5.

**Response to Comment B4-77**

Response is identical to the responses for comments B4-2 to B4-5.

**Response to Comment B4-78**

Response is identical to the responses for comments B4-2 and B4-4.

**Response to Comment B4-79**

As documented in YMPO Board of Directors meeting notes from July 28, 1994, Mr. Vaughan asked for a clarification from the Executive Board regarding the preferred name for the Area Service Highway. He explained that the joint city/county resolution referred to the planned facility twice as the Araby Expressway. Executive Board members reached a unanimous consensus to call the facility the Area Service Highway.

Refer to the response to comment B4-2 for additional discussion regarding the Marine Corps Air Station stance on encroachment to the BMGR.

**B4****B4-76**  
(cont'd)

military encroachment issue has been documented in the press and now articles about encroachment on military bases are a frequent occurrence. The Governor of Arizona recently established, by executive order, a Military Facilities Task Force. (See for example, articles such as "Governor Meets with Military Task Force," *The Sun* [Yuma, Arizona], June 11, 2003, pp. B1-B2, and "State Lags on Saving Military Sites," *The Arizona Republic*, June 11, 2003, B1-B2). Yet encroachment on a military base is not even treated as a distinct issue in the EA.

**B4-77**

Encroachment comes in different forms. One is actual construction of facilities on a military base which are unrelated to the military mission of the base, especially when they involve long-term commitment of resources. The Area Service Highway is a prime example of this.

**B4-78**

Another form of encroachment occurs when development constrains or affects the activities of a military base. This can occur when residential or commercial development occurs in the vicinity of and often adjacent to a military base boundary. When this type of encroachment occurs, neighbors of the base begin to oppose activities on the base because they are perceived as having an adverse impact on the residents adjacent to the base. Over time, pressures develop to separate areas from the base and open them to private development, or the military find their mission so constrained that they move somewhere else and the land can pass into private ownership. This is the situation that the western and northern boundaries of the Goldwater Range face. There are plans to pave County 14<sup>th</sup> Street all the way east to the Foothills, along the northern boundary of the Goldwater Range. There has already been residential development, in some cases right up to the western range boundary, between County 14<sup>th</sup> Street and County 19<sup>th</sup> Street. Paving County 14<sup>th</sup> Street will only increase this development. There is also already residential development up to the Goldwater Range boundary adjacent to Fortuna Wash in the Foothills. On page B-36 of the EA, a resolution of the City of Yuma indicates a commitment to "Improve County 19<sup>th</sup> Street from U.S. 95 to the Araby Expressway." Is the Area Service Highway the "Araby Expressway"? If so, this will eventually result in an interchange at County 19<sup>th</sup> and the Area Service Highway, and lead to development in this area, which will encroach on the Goldwater Range. Among other things, adjacent development increases the amount of trespass on the Goldwater Range, which is open to the public only by permit and only in designated areas. While the EA mentions development of private lands along County 14<sup>th</sup> Street, development of state lands, and conversion of farmland to residential areas (EA, pp. 50-51), it does this in the context of whether there will be enough land available for development and fails to relate development in the Goldwater Range vicinity to the military encroachment issue. This further demonstrates the inadequacy of the EA and the necessity to include encroachment on military lands as a distinct issue. There is more concern in the EA about "encroachment" on Arizona State Trust Land than on the Goldwater Range (EA, pp. 9-10, "2. County 23<sup>rd</sup> Street/Avenue 4E").

**B4-79**

B4	
Air Quality	
B4-80	Although the EA includes some discussion of the effect of carbon monoxide on air quality, there is little or no analysis of impacts from oxides of nitrogen and particulates resulting from the proposed action (EA, pp. 34-35). This inadequacy should be corrected.
Land Ownership and Uses	
B4-81	The EA shows only a narrow band of existing land uses in Figure 7 (p. 21). In order to adequately assess impacts of the proposed action, land uses over a wider area should be shown, rather than just a mile-wide corridor centering on the highway.
B4-82	This has been done for land ownership in Figure 6 (p. 20). The EA should also include a map showing the zoning for areas along and adjacent to the proposed highway route, similar to Figure 6.
B4-83	The EA is also confusing about whether Arizona State Trust Land and private land is located within the boundaries of the Goldwater Range. The EA states on p. 19 that "Private in-holdings and state ownership within the BMGR and the BOR lands that are jointly managed by BLM are not shown in Figure 6." and "Some private in-holdings are also located within the BMGR, particularly near the northwest boundary." Are there Arizona State Trust Lands and private lands within the Goldwater Range? If so, why aren't they shown in Figure 6?
Traffic Issues	
B4-84	How much traffic congestion (backup) will occur at the Area Service Highway intersections at 32 <sup>nd</sup> Street and County 14 <sup>th</sup> Street as traffic must periodically stop for traffic signals? How will traffic speed be regulated so that the intersection at County 14 <sup>th</sup> Street doesn't become a death trap as large trucks need to quickly decelerate from 70 mph in order to stop for the traffic signal? There is also a serious concern about trucks hauling hazardous materials under these conditions at these intersections.
B4-85	
B4-86	
Hazardous Materials	
B4-87	While the EA assesses hazardous materials sites in the project area and during the construction phase, there is no assessment of quantity and type of hazardous materials that will be carried by vehicles using the proposed Area Service Highway route. Nor is there any information on how hazardous materials incidents will be handled. This is another deficiency of the environmental assessment and a section on impacts of hazardous materials resulting from highway use should be added.
B4-88	

### Response to Comment B4-80

Air quality impacts of emissions of oxides of nitrogen (NO<sub>x</sub>) are not assessed as project-level impacts because these emissions are intermediary gases which must combine with sunlight and other compounds to produce pollutants that are deleterious, such as ozone. The effects, if any, of these emissions, chemical precursors of ozone, are experienced regionally and are dependent on the presence of other, nonproject factors. The ASH is not in a nonattainment area for ozone.

While construction and operation of the ASH would increase area PM<sub>10</sub> concentrations, EPA has not yet developed procedures for analyzing project-level particulate pollution impacts. Section IV. G. Air Quality discusses why the project would not be in violation of the Clean Air Act:

The proposed ASH falls within the Yuma PM<sub>10</sub> Nonattainment area. In response to the requirements of the Federal Intermodal Surface Transportation Efficiency Act (ISTEA), the Yuma PM<sub>10</sub> Nonattainment Area State Implementation Plan (SIP) was prepared in 1991 and revised in 1994. The Plan's primary purpose is to eliminate or reduce the severity of the violations of the National Ambient Air Quality Standards and expeditiously attain such standards. The 2000 Air Quality Conformity Analysis (for the Yuma PM<sub>10</sub> Nonattainment Area), approved by FHWA and the Federal Transit Administration on January 23, 2001, demonstrated that the adopted 2001–2005 Transportation Improvement Plan (TIP) and 2000–2023 Countywide Transportation Plan (CTP) (approved November 30, 2000) conform to the SIP.

The ASH was included in the conforming TIP and CTP and is also included in the 2001–2003 State Transportation Improvement Program (STIP). The proposed ASH is a conforming project, signifying that it does not contribute to any new PM<sub>10</sub> violations, increase the frequency or severity of PM<sub>10</sub> violations, and would not delay attainment of the PM<sub>10</sub> standard.

Figure 7, entitled Existing land use, has been changed in the Final EA to include area outside of the corridor.

**Response to Comment B4-82**

The Final EA, Section IV. A. Jurisdiction, Ownership, Land Use, and Zoning, includes a discussion on the zoning within the corridor. For the purpose of the environmental analysis a graphic representation at that level of detail was deemed unnecessary.

**Response to Comment B4-83**

There is no private or Arizona State Trust Land within the boundaries of the Barry M. Goldwater Range. The Final EA has been revised to correct this statement.

**Response to Comment B4-84**

The traffic patterns and projected Level of service (LOS) at the ASH intersection with 32<sup>nd</sup> Street and County 14<sup>th</sup> Street has been evaluated for the year 2015. For reference, LOS is a qualitative measure referring to the degree of congestion or delay experienced by motorists. Levels of service range from A to F, with A being the best quality of flow and F being the poorest. LOS C is generally considered to be an acceptable condition and is used for planning and design purposes. ADOT uses a threshold of 10,800 vehicles per day (vpd) for LOS C on a two-lane rural highway. According to ADOT and American Association of State Highway and Transportation Officials (AASHTO) guidelines, traffic volumes in excess of 10,000 vpd warrant consideration of four or more traffic lanes to provide an acceptable operation and maintenance at a LOS C.

The intersection of County 14<sup>th</sup> Street and the ASH would experience an LOS B in the year 2015. The intersection of 32<sup>nd</sup> Street and ASH is expected to have an LOS C by the year 2015. The Final EA has included additional discussion regarding LOS. Refer to the Final EA, I. Project Purpose and Need.

**Response to Comment B4-85**

Advance warning signs would be installed and the speed limit would be reduced appropriately.

**Response to Comment B4-99****Response to Comment B4-86**

In addition to the reviewing of response to comment B4-13, above, please consider this additional information:

The 1998 State of Arizona Emergency Response and Recovery Plan identifies the Department of Public Safety and ADOT as the primary agencies for addressing highway incidents with associated hazardous materials concerns. The Plan was created to meet the state's hazardous materials emergency planning mandate (as well as those of EPA and the Federal Emergency Management Agency), and to protect life and property from risks associated with the discharge, release, or misuse of hazardous materials. Hazardous materials incidents within the ASH corridor would be addressed according to the Plan, and other applicable local, state, federal, and international laws, regulations, and guidelines.

All vehicles using the ASH would be regulated by applicable local, state, federal, and international laws. Accidents involving potential hazardous materials within the ADOT right-of-way would be appropriately remediated. Therefore, construction of the ASH would not result in substantial hazardous materials impacts.

**Response to Comment B4-87**

Specific information about the quantity and type of hazardous materials that would travel the ASH is unknown. However, hazardous materials and waste are transported along almost all state highways. There are segments of the Arizona State Highway System that do not allow the presence of trucks transporting "hazardous" cargo. These sections are identified when the design of the highway is such that special conditions exist which would exacerbate the repercussions of an accident. The design of the ASH would not create a situation warranting the exclusion of hazardous materials.

All vehicles using the ASH would be regulated by applicable local, state, federal, and international laws. Accidents involving potential hazardous materials within the ADOT right-of-way would be appropriately remediated.

**B4**

## Visual Resources

**B4-89**

The EA ignores impacts of the proposed highway route on visual quality. Negative visual impacts will be apparent to residents of the area on a daily basis, and they will also be apparent to persons using the highway. Some people moved to the area adjacent to the proposed highway route because they were attracted by the view. These impacts should be assessed as part of the document.

**The Purpose of and Need for the Proposed Route is Based on Dubious and Unsupported Assumptions**

## The Border Plant (Maquiladora) Economy

**B4-90**

One of the major justifications for building the Area Service Highway is the development of the border plant, or maquiladora, economy. However, the maquiladora industry is already in decline, even before the road is built. A November 22, 2002 newspaper article by Louie Villalobos in *The Sun* of Yuma, Arizona ("Jobs Along Border in Danger", pp. A-1, A-6) reports that the number of factory workers in San Luis Rio Colorado has dropped from 13,000 to 8000 and that along the length of the U.S.-Mexico border, 250,000 jobs in maquiladoras have been lost. These jobs are moving to southern Mexico and China because manufacturers can take advantage of cheaper labor there. The EA fails to take this factor into consideration in the section on Project Need (EA, pp. 1-2). When the declining maquiladora industry is taken into consideration, the need for the project is considerably reduced.

## Traffic Safety

**B4-91**

Another claimed purpose and need for the project is "removing commercial traffic and hazardous cargo from populated and congested areas" (EA, p. 4; see also p. 12). At the public hearing in Yuma on June 12 we also heard in the presentation that US 95 has an unhealthy mix of traffic, including commercial trucks, slow-moving farm equipment, farm labor buses, and passenger cars. However, the Area Service Highway would remove only one of these classes of vehicles from US 95, and only partially so. Commercial trucks will still need to access businesses in Yuma, Somerton, Gadsden, and San Luis, so commercial truck traffic can't be completely eliminated. Slow-moving farm equipment will still need to use US 95 to access fields in the area. The proposed route of the Area Service Highway will have little to no effect on reducing farm equipment traffic on US 95. Farm labor buses will also still need to use US 95 to access fields and embarkation points for buses. The proposed route of the Area Service Highway really does very little to reduce the dangerous mix of traffic on US 95, which significantly reduces the overall purpose and need for the project.

Please refer to the responses to comments B4-13 and B4-86. Additionally, information regarding the handling of hazardous waste incidents has been added to the Final EA.

**Response to Comment B4-89**

The Draft EA (p. 45) acknowledges potential negative visual impacts to residents:

Some of the residents in the Pioneer Rancheros development—who would be viewing the County 19<sup>th</sup> Street overpass, the roadway (south of the overpass), and construction disturbance within a relatively undeveloped landscape setting—would be the most sensitive to changes in the visual quality of the area. The effects on these residents would decline as vegetation is reestablished on the disturbed roadway embankment slopes. Screening the MCASY Rifle Range at County 19<sup>th</sup> Street may impact the existing setting, depending on the solution developed by ADOT and MCASY.

The overall visual character of the existing landscape would substantially change with the construction of the ASH because the majority of the alignment would occur in a relatively natural, undeveloped area. The proposed four-lane divided roadway would create limited modification to the landscape because of the relatively flat terrain. The elevated structures associated with grade-separated traffic interchanges would be the most dominant and distinct built features in the landscape.

**Response to Comment B4-90**

Response is identical to the response to comment B4-1 7.

**Response to Comment B4-91**

Construction of the ASH and commercial port of entry would encourage trucks to use SR 195 (the ASH) instead of US 95 to access I-8. This should provide a reduction in truck traffic on US 95, thereby reducing vehicular conflicts with farm equipment and farm labor buses.



B4	
User/Taxpayer Benefits	
B4-92	Taxpayers are footing the bill for the Area Service Highway. However, instead of providing them with a freeway to serve the transportation needs of the crowded San Luis-Gadsden-Somerton-Yuma corridor, the highway is routed far from centers of population. The road's main benefit would be for owners of border factories (maquiladoras) in the San Luis, Mexico area. The EA states at page 45 that "The primary users of this highway would be commercial vehicle drivers." The public is being discouraged from using the highway because some trucks will be carrying hazardous materials. Moreover, the public is being discouraged from using the road because of the amount of truck traffic that the road's proponents project for it. As of June 22, 2003, the Yuma Metropolitan Planning Organization (YMPO) web page stated that "Commercial truck traffic at the border is expected to increase to 1200 trucks a day by the year 2015." < <a href="http://www.ympo.org/ash.htm">www.ympo.org/ash.htm</a> >. However, the EA (p. 25) states that "In 2015, YMPO anticipates that 1,500 commercial vehicles would be coming into Arizona from Mexico at the existing POE [port of entry] in San Luis, representing a ten-fold increase over the current traffic". Since both estimates come from YMPO, which figure is correct? On what assumptions are they based?
B4-93	
B4-94	
B4-95	
Hazardous Materials	
B4-96	The claim in the Purpose and Need Section of the EA (p. 4) that an object of the project is to remove "... hazardous cargo from populated and congested areas" just doesn't ring true. As population grows and development expands east and southeast of Yuma, the Area Service Highway will be running right through a populated area north of the Goldwater Range. It could also run through a populated area as San Luis expands to the east. This will negate the supposed advantage of locating the highway in currently less-developed areas in order to route hazardous material transport away from humans. This greatly reduces the need for the proposed highway, since another of the principal claimed benefits won't be realized.
B4-97	The amount of hazardous material carried on the Area Service Highway would also be only a fraction of the hazardous materials carried in the Yuma-San Luis area. Every day hazardous materials pass through and arrive at and depart from Yuma by train on the Union Pacific and by truck on I-8 and other routes. Unfortunately, there is no way to route all hazardous material transport to areas unpopulated by humans. Instead, the hazardous materials need to be neutralized where they are produced so they don't need to be transported or at least can be transported without danger to the public and the environment.
B4-98	Because the proposed action and the EA fail to effectively address traffic needs for the Yuma to San Luis traffic corridor, and because the claimed purposes and needs for the proposed route of the Area Service Highway are shown to be overwhelmingly unsupported, there really is no effective purpose and need for the proposed route other than providing a high-cost limited-benefit route for commercial interests. General public benefits from the proposed route will be minimal.

## Response to Comment B4-99

### Response to Comment B4-92

Refer to the response to comment B4-1 0.

### Response to Comment B4-93

Refer to the Final EA, Section II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.

### Response to Comment B4-94

Construction of an alternative that avoids existing population centers would not, in itself, discourage the public from using the highway. It would provide for more effective regional transportation for all vehicles, whether commercial or private. Construction of any alternative would not, in itself, discourage the public from using the highway. It would provide for more effective regional transportation for all vehicles, whether commercial or private. Furthermore, ADOT would not sign the road as a commercial route nor exclude public use of the highway.

Hazardous materials and waste are transported along almost all state highways. There are segments of the Arizona State Highway System that do not allow the presence of trucks transporting "hazardous" cargo. These sections are identified when the design of the highway is such that special conditions exist which would exacerbate the repercussions of an accident. The design of the ASH would not create a situation warranting the exclusion of hazardous materials.

Hazardous materials spills/concerns on the ASH would be treated the same as any hazardous materials incidents on the state roadway system. Spills/issues would be contained within the ADOT right-of-way if possible, and appropriately treated/remediated. The ADOT Motor Vehicle Division has a system in place to respond to all accidents and spills involving hazardous cargo/waste along the State Highway System to ensure that remediation, where applicable, follows state and federal guidelines.

Construction of an alternative that avoids existing population centers would not, in itself, discourage the public from using the highway. It would provide for more effective regional transportation for all vehicles, whether commercial or private. Furthermore, ADOT would not sign the road as a commercial route. In addition, refer to the response to comment B4-13.

Removing commercial traffic and hazardous cargo from populated and congested areas (Draft EA, p. 4) could mean that recreational pursuits of the general public would be facilitated: it would be easier for the public to reach more remote and less congested areas. Whatever limitations the Preferred Alternative would have in serving recreational purposes, these limitations would be shared by any alignment meeting the project's purpose and need.

The method used for the traffic forecasts was a combination of historic growth in truck crossings and forecasts made by the local U.S. Customs office. See the MIS for further discussion of traffic forecasts. The number 1,200 on the Web site is incorrect.

#### **Response to Comment B4-96**

The objectives for the highway are clearly listed in the Draft EA (p. 4); of the three specific objectives, two are directed toward facilitating the transport of goods across the International Border and toward removing commercial traffic from populated and congested areas. Through this redirection of commercial traffic to the ASH, the public would be freer to use existing transportation links without the congestion and conflicts with commercial transport that would otherwise be anticipated.

Construction of an alternative that avoids existing population centers would not, in itself, discourage the public from using the highway. It would provide for more effective regional transportation for all vehicles, whether commercial or private. Furthermore, ADOT would not sign the road as a commercial route.

**Response to Comment B4-99****Response to Comment B4-97**

Comment is noted in the project record.

**Response to Comment B4-98**

Meeting traffic needs for these populations was not part of the purpose and need of the proposed highway (refer to the Draft EA, p. 4).

Refer to the Final EA, Section II. Alternatives Considered for a discussion on the main reasons for selecting the Preferred Alternative: This alternative would provide a new route for auto and commercial traffic, offer the greatest opportunity for reducing potential delays on US 95, add roadway capacity within Yuma County for automobile and truck traffic, reduce conflicts with in-transit farm equipment, and remove commercial traffic from the urban areas of the cities of Yuma, San Luis, Somerton, and Gadsden. These are all benefits to County residents, visitors, and through traffic.



**B4**

**The Proposal Includes Unmitigated Impacts**

**B4-99**

On page 36, the EA admits that some noise impacts cannot be mitigated. This is in part because the cost is considered too high to be justified. This should be added to the list of significant impacts resulting from this project.

**B4-100**

The EA on page 43 provides no mitigation for highly likely impacts to the endangered Peirson's Milkvetch. The results of a Section 7 consultation with the U.S. Fish & Wildlife Service concerning impacts on Peirson's Milkvetch (as well as Sonoran Pronghorn and Mountain Plover) will not be available until the final EA is issued. How are we supposed to evaluate these impacts lacking this critical information?

**B4-101**

On page E-6, as part of the Flat-tailed Horned Lizard Mitigation and Monitoring Plan, the EA states that 643 acres of habitat will be permanently lost to the Flat-tailed Lizard because that is the amount of land required by the highway right-of-way. The mitigation plan then states that only 565 acres will be compensated for habitat loss, but that the remaining 78 acres are apparently uncompensated because that part of Flat-tailed Horned Lizard habitat is not administered by the signers of the Flat-tailed Horned Lizard Rangeland Management Strategy. This is a significant impact and another reason why an environmental impact statement is needed to adequately assess the effects of this project. This information was buried in an appendix, rather than appearing in the body of the environmental assessment.

**Conclusion**

For all the reasons above, the EA is inadequate in assessing the impacts of the project on the environment. An environmental impact statement, with a greater variety of analyzed alternatives, is clearly required for a project of this magnitude. Furthermore, the stated purpose and need for the proposed route of the Area Service Highway just isn't supported when the assumptions are examined. Given the stated purpose, need, and analysis in the environmental assessment, there is no need for an Area Service Highway along the proposed route. Whether a highway located farther to the west, which would serve more needs (such as those of the busy Yuma to San Luis traffic corridor) could possibly be justified will require an environmental impact statement.

Thank you for the opportunity to comment on this project, both in these written comments and at the public hearing held in Yuma on June 12.



Cary Meister  
Conservation Chair

**Response to Comment B4-99**

One receiver is in an isolated location where installation of a noise barrier would not be practicable for just this single receiver. Guidelines for mitigating noise impacts based on costs are just that—guidelines. They can be waived, and they are not related to significance. In fact, the situation involving the one receiver whose noise impacts could not be practicably mitigated would experience noise impacts that do not qualify as “substantial” under the FHWA policies.

To date, the noise analyses have been preliminary. Those receivers who have been identified as potentially experiencing near- or above-threshold noise impacts would be evaluated further when and if the project moves to the level of detailed engineering design. Analyses at that time would involve rerunning the analyses with the specific engineering plans to identify if and where problems might arise and if mitigation measures would be warranted.

**Response to Comment B4-100**

Section 7 consultation was completed in July 2003 with the issuance of a Biological Opinion by FWS. The results of Section 7 consultation with FWS on the project's impacts to Peirson's milk-vetch, Sonoran pronghorn, and mountain plover are currently available for review on the FWS Arizona Ecological Services Field Office website at <<http://arizonaes.fws.gov/>> and at the ADOT Environmental & Enhancement Group office in downtown Phoenix.

It is currently unknown if Peirson's milk-vetch occurs within the project area. Typical habitat for Peirson's milk-vetch consists of unstable sand dune formations below 1,000 feet in elevation. The species is currently known to occur only within the Algodones Dunes in California and the Gran Desierto Dunes in Sonora, Mexico. However, according to FWS, a single specimen was recorded in Arizona from a partially stabilized low dune system near the ASH alignment. Because this habitat has not recently been surveyed for Peirson's milk-vetch, the habitat was assumed to be occupied. However, the FWS has removed Peirson's milk-vetch from the threatened and endangered species list for Yuma County because specimens from Arizona that were previously described as *Astragalus magdalenae* var. *piersonii* were determined not

**Response to Comment B4-100 (continued)**

*to be the piersonii* variety. Surveys would be conducted once conditions are favorable for Peirson's milk-vetch emergence, as stated on pages xxi and xxvi of the Final EA.

**Response to Comment B4-101**

Up to 4,277 acres of FTHL habitat would be compensated by ADOT, which includes 623 acres of habitat lost to the ASH right-of-way. See Section IV. K. Threatened, Endangered, and Sensitive Species of the Final EA for a complete discussion.

**Response to Comment B5-1**  
 Comment is noted in the project record.

**Response to Comment B5-2**  
 Comment is noted in the project record.

**Diane Simpson-Colebank**

**B5**

From: Ken Rosevear [ken@yumachamber.org]  
 Sent: Friday, June 27, 2003 10:47 AM  
 To: Diane Simpson-Colebank  
 Subject: comments on Area Service Highway

Dear Diane Simpson-Colebank,

I represent the **Yuma County Chamber of Commerce** as the Executive Director. We have a keen interest of the construction and completion of the Area Service Highway as it relates to building and operation of the new Yuma Port of Entry in San Luis, AZ. We strongly support the Area Service Highway since it will serve as the connector road for commercial traffic from the San Luis, AZ border crossing to Interstate 8. This highway will serve as a direct route for traffic flowing north from Northern Mexico. The environmental issues have been researched and mitigated, funding committed, and we are now ready to move forward. The future economy of southwest Arizona and the region depends on this port and highway being constructed. We are willing to answer any questions. Again, the Chamber fully supports the construction of the Area Service Highway and all necessary infrastructure.

Ken Rosevear  
 Executive Director  
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**B5-1**

**B5-2**